Editorial Comment
July

NATIONAL MUNICIPAL REVIEW

Vol. XXI, No. 7 Total No. 193

The August issue of the REVIEW will be a special county number, in which the current trends in county and rural government will be described and analyzed. It will be an important contribution to the literature on the subject, worthy of filing and cataloguing as an individual document.

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Henry Hodges, an old contributor to the REVIEW, sends from Berlin two items of interest to students of municipal government.

A Berlin correspondent (whose sense of humor hard times have not completely ruined) writes the Dortmund *General Anzeiger* to ask for some statistical information. He wants to know how much time is required for a scrubwoman to clean (a) a cuspidor, (b) a toilet, (c) a square foot of floor space—(1) with dry cloth, and (2) with wet cloth.

To meet the very evident surplus of taxicabs cruising in city streets, Berlin has passed a new ordinance permitting only even numbered taxis to appear on the streets on even numbered days of the month and only odd numbered taxis on odd numbered days. All cabs have large serial numbers painted on both sides to indicate on which day they can legally be operated.

Happy-Go-Lucky Citizens

In an address upon the occasion of the twentieth anniversary of the Detroit Citizens' League, Dr. Edgar DeWitt Jones, pastor of the Central Woodward Christian Church of Detroit, attributed many of our political ills to happy-go-lucky citizens. These citizens may prate about their citizenship but refuse to regard it seriously. They are four types, as follows:

1. The citizen who thinks everything will come out all right in the end. He is a Pollyanna philosopher who lives in a political world of make-believe;

2. The citizen who declines to participate in politics because it is out of his line. He differs from the first type in that he believes everything will not be right unless somebody makes it right, but he expects others, not himself, to act in this capacity;

3. The lawless happy-go-lucky citizen who drives through a red light without compunction if he thinks it is safe to do so. He is a menace because he thinks laws are made for others, not for himself;

4. Finally, there is a blind partisan, the traditionalist in politics. He lets the political boss think for him. He always votes the straight ticket. Yet he is a lesser evil than the man who seldom votes or does not vote at all.

The Reclamation of the Lower East Side

Everyone has heard of the Lower East Side, that part of Manhattan bounded by East 14th Street, Third Avenue, the Bowery and the East River. The name is synonymous with poverty, slums and babel of tongues. It is now a vast blighted area, economically and socially. Is there any hope for it? The East Side Chamber of Commerce and the Lower East Side Planning Association think that there is. So they retained Harland Bartholomew and Associates to prepare a new plan for the famous district.

The planners found an area of 900 acres in which population had decreased 52 per cent in twenty years (1930 pop. 249,755); in which 16 per cent of the stores are vacant; in which land and improvement values are declining. Rapid transit, automobile, cessation of immigration, removal of the garment industries, obsolete construction and evil reputation have all contributed to the result. Yet the district is said to be more favorably situated for dwelling use than any other part of the city and appears capable of a most economical and permanent reconstruction.

The situation is an economic, social and aesthetic mistake of which the city at large is still unaware. Indeed the existing zoning ordinance tends to perpetuate the mistake. In a territory predominantly adapted to residences there are but 10 small areas zoned exclusively for dwellings. Radical changes in the zone plan, as in the minor street system, are necessary.

There is no hope, declares Mr. Bartholomew, in efforts to renovate existing buildings or to construct new buildings on individual lots. Many present owners are without sufficient funds so to improve, even if it were desirable. No satisfactory solution exists short of complete rebuilding in large units.

To ascertain the practicability of the large scale, unit type of building operation for the Lower East Side, John Taylor Boyd, Jr., made an analysis of one specific district. His conclusion is that neighborhood units of a new and superior standard, providing residences at moderate rentals, are possible. Each unit would include facilities for shops, schools, playgrounds, parks, churches and open spaces. The Lower East Side is already divided into neighborhood islands by its major and secondary thoroughfares. It is admirably situated as a home site for office workers. Its accessibility to the Wall Street district and to uptown business centers, and its low general land values are strong arguments for development into a higher economic use.

Such an undertaking is, of course, too gigantic for any single individual. Mr. Bartholomew, therefore, recommends the organization of limited dividend housing corporations as the most promising method of attack. Private initiative and private capital can probably do the work, he believes. But he is not absolutely certain. Subsequent experience may prove that the East Side is fitted for only a low cost type of housing for the lowest income groups (such as at present inhabit the area) which can be built only by aid from the city or state. It is a fair assumption, however, that this immense blighted region can be restored on a profitable economic basis if modern principles of planning and the best known methods of large scale construction are utilized.

When the depression hit us, plans were in process for at least one neighborhood unit on the East Side. With the return of prosperity we may expect renewed activity looking to the reclamation of an area too rich in possibilities to be long overlooked. The results of the experiment will be of tremendous significance to all cities suffering the economic wastes of blighted sections.

Trial by Courts or Commission?

Are personal injury cases better handled by a court or by a commission? This is the question which the section on the Administration of Justice of the Commonwealth Club of California has asked. Although the section reported itself hopelessly divided on major recommendations, the findings of fact, revealed by the Club's research service, are all in favor of the commission.

Since 1913, California has had an industrial accident commission to handle claims of injured employees in accordance with the workmen's compensation law. Should a similar body be created with respect to the remaining fields of personal injuries, particularly automobile accidents which account for the majority of non-industrial personal injuries?

To find out the actual situation, a study was made of the 263 fatal auto accidents in the Bay region in 1927, and of the first 200 personal injury cases in the supreme court in San Francisco in the year 1928. The 200 latter cases were then compared with the first 200 cases filed with the industrial accident commission in the same year. The results present striking variations in respect to the swiftness, certainty and cost of justice as administered by the two bodies.

The average time consumed in court cases which reached a final judgment was more than 60 weeks; in commission cases it was only 8.7 weeks. Even in court cases settled before trial (a majority are so disposed of) the average time consumed was one year. One hundred per cent of the commission's awards were paid in full; only 69 per cent of the face value of the court awards were paid. The net recovery of plaintiffs in court actions, after deducting medical expenses, attorney fees and court costs, was 40 per cent of the face value of judgments wholly or partially satisfied; the net recovery under commission procedure was 91 per cent. Attorneys' fees in court cases in which judgments were wholly or partially satisfied amounted to 34 per cent of the gross amount recovered; in commission cases they were 3 1-3 per cent. Average court costs in trial cases were $61.32; in commission cases costs averaged 86 cents. Another way of illustrating the comparative expense of the two methods of adjudication is by the following extract from a table of the research report:

Awards and Judgments	*Court*	*Commission*
Average recovery per settled case	$6,175	$972
Average net recovery	2,913	968

It appears that only about 20 per cent of the total automobile deaths result in law suits. Only one-third of all court cases are carried to judgment, whereas in industrial accident cases almost 80 per cent are carried to decision, and 10 per cent more are closed by settlements approved by the commission.

"We infer from these figures," concludes the report, "that the confidence of litigants in the efficiency of judicial system is impaired because of the delay, expense and uncertainty of litigation."

The committee is divided as to whether the courts and the commission may be fairly compared. Insurance is compulsory under the workmen's compensation act; not so for automobile drivers or owners. In the former, damages are standardized and are based almost exclusively on loss of earnings; in the latter, damages lie in the discretion of the jury and include alowance for pain and suffering. Court actions, it is further asserted, frequently involve more complicated facts and issues than are presented in compensation cases before the commission. Negligence is not an issue in workmen's cases as it is in personal injury suits. Appeals to higher courts from lower courts involve broader

and more complicated questions than do appeals from the commission.

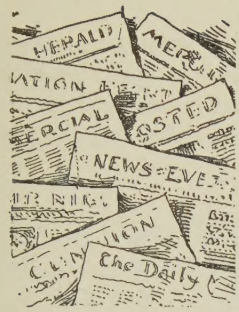
On the other hand it is urged that both classes of cases involve the trial and determination of similar questions of law and fact, and in the last analysis are comparable judicial proceedings. While the procedure of the commission is more simple and expeditious than court procedure, it is claimed that the two systems do not present essential differences. Many of the procedural advantages enjoyed by the commission can be applied equally well to the courts. Moreover, damages recoverable in automobile cases can and should be standardized, as are workmen's compensation damages, and automobile insurance should be made compulsory as in the case of employers.

As to quality of justice measured out by the two systems, no marked disparity appeared.

The suggestion that automobile accident cases be made commission, rather than court, matters is indeed a bold one, too radical for the Commonwealth Club itself to endorse. But, in our opinion, the case is clear for sweeping changes in our treatment of automobile accident cases, which have come to be fairly well standardized and classifiable. Much of the court procedure is obsolete if not positively harmful (consider medical experts testifying for a contingent fee). The commission method has established that a more direct approach to a settlement is possible without sacrifice to essential justice.

Since the Commonwealth Club's report was issued the Committee to Study Compensation for Automobile Accidents has published its report, in which approval is given to the compensation plan for injuries caused by motor vehicles. This plan discards entirely the principle of negligence and requires every motorist whose automobile causes an injury to pay compensation in accordance with a statutory scale of benefits, after the analogy of workmen's compensation laws. It requires every motorist to carry insurance for his liability to pay compensation. It contemplates for the great bulk of cases prompt and inexpensive relief to injured persons and to the families of those who are killed. The committee believes that the prevailing principle of liability for fault only is a principle of social expediency, and not one found on any immutable basis of right.

The man who has never participated in an automobile accident, and expects never to do so, still has a pecuniary interest in accident cases. Insurance companies pay out each year approximately one hundred million dollars in claims for automobile injuries to persons and property. Money properly saved in the adjustment of these claims will, in due time, leave us more to spend for gasoline to enjoy the fine roads our taxes are building. But that would mean more accidents, so perhaps the problem of claims settlements is more one of equity than of economy, except for the parties litigant, in which class, however, any one of us may fall without a moment's notice.



HEADLINES

Removal of Jimmy Walker as mayor of New York city seems assured, whether or not Roosevelt gets the Democratic presidential nomination. If he gets it, the governor will have to go before the country as an anti-Tammany man to be elected. If he fails to get the nomination, he will certainly have no reason to back down on his own statement that an elected public official "owes a positive public duty to the community to give a reasonable or credible explanation of his sources of income."

* * *

Movements toward county consolidation in 64 counties of 20 states and 17 state-wide consolidation proposals contradict the apparent political difficulties of putting over such mergers. Declining personal incomes are the heart and soul of such efforts; social tradition and politics as well as privileged commercial interests may have to kneel before this new power.

* * *

The model registration law used by Louisville cannot apply to all of Jefferson County despite passage of a bill to that effect by the legislature, because of constitutional provisions forbidding local or special legislation, the Kentucky Court of Appeals has ruled. Another instance of a once sweet court provision turning sour with the march of time.

* * *

A commission to study the cost of the state government of Michigan has been organized, the governor appointing three members, the lieutenant governor three, and the speaker of the house three.

* * *

Merger of the 103 departments, bureaus and commissions of the state government of Arkansas into 15 is being considered by the governor's commission on reorganization.

* * *

Movements for the manager plan are under way in 128 cities and 28 counties in 37 states at the present moment. Oddly enough, the recent election record has spelled defeat for such efforts. Is fear of the unknown making the majority of voters cling to the known? If so, Hoover's chances are better than they have been pictured.

* * *

A proposed constitutional amendment providing for an executive budget system for the state of Missouri has been endorsed by the Associated Industries of Missouri, which is circulating petitions in its behalf. A companion amendment would prevent either house of the legislature from employing more than 75 employees.

Copying the Christmas savings club idea, Detroit banks have launched a system of taxpayers' clubs which provide opportunity to pay taxes in small monthly installments throughout the year. The plan has been formally approved by the city council and the city treasurer will mail out announcements explaining the plan with this year's tax bills.

* * *

Agitation to make Buffalo a separate county is stirring interest in that lake city. More of such proposals will undoubtedly be heard as urban taxpayers see they are supporting needless layers of government.

* * *

Petitions are being circulated throughout the state of Ohio in behalf of a constitutional amendment permitting counties to draft their own charters. The amendment also makes provision for the redistribution of functions between existing units of government.

* * *

Detroit's offer to pay taxpayers 6 per cent interest on next year's taxes paid before the due date, July 15, has brought $1,750,000 into the city treasury.

* * *

Budget cutting is becoming politically as well as financially necessary these days. The new Chicago budget as presented to the city council is $24,000,000 lower than last year.

* * *

Consolidation of counties is not drastic enough for a Denver citizen, who has drafted a plan for merging the present 48 states into 15. Well, why not—it would be a simple matter to glue together again North and South Carolina and Virginia and West Virginia . . . . what's the matter, did the audience leave?

* * *

Once a year the Berkeley, California, city hall holds "open house," inviting all citizens to come and see the wheels go round. This year 3500 took advantage of the opportunity.

* * *

The administration of criminal justice is certainly making great progress these days. The latest comes from Pennsylvania, where a justice of the peace sentenced five dogs to 30 days in jail for killing 40 sheep and a prize bull.

HOWARD P. JONES.

Mayor Walker Takes the Stand

THE mayor's wisecracks satisfy his followers but Judge Seabury and many others remain unconvinced

BY JOSEPH D. McGOLDRICK

Columbia University

THE long promised climax of the Seabury investigation came with the summoning of Mayor Walker to the witness stand. The case against him had been taking shape during the two weeks previous, particularly in the disclosure of the extraordinary activity of Senator John A. Hastings, long an intimate of the mayor. Senator Hastings had actually been in the employ of the promoters of the Equitable Coach Company. The most amusing item introduced up to this point had been the following telegram sent by J. A. Smith to Frank Fageol of the Equitable Bus group:

NL SYRACUSE MAY 17 1928
F R FAGEOL
BILTMORE HOTEL LOS ANGELES CALIF

NO ANSWER YET YOUR SUGGESTED FINANCING STOP HE ADVISES WAR BOARD NOTIFIED BOY FRIEND TIME LIMIT WAS APRIL FIFTEENTH STOP HAVE MADE PROGRESS UPSTAIRS AND ARRANGED MEETING LATE YESTERDAY BETWEEN JUDGE AND BOY FRIEND BEFORE HE LEFT FOR FLORIDA STOP JUDGE REPORTED FAVORABLE PROGRESS AND EXPECTED SEE HIS BOSS TODAY AND ADVISE ME MONDAY STOP HIS BOSS POOR HEALTH ORDERED AWAY FOR MONTHS BUT IF HE SAYS YES WE CAN GET EXTENSION WILL KEEP YOU ADVISED- J A SMITH

As interpreted by Judge Seabury "he" in the telegram referred to Senator Hastings, the "boy friend" was Mayor Walker, the "war board" Tammany, "upstairs" meant the General Electric offices in the Equitable Building, the "judge" meant the general counsel for that company, and the "boss" either Owen D. Young or Gerard Swope.

THE $10,000 LETTER OF CREDIT

The case against Mayor Walker developed in connection with three principal matters. The first of these involves a $10,000 letter of credit. This letter, drawn in the name of Mayor Walker for a trip abroad in 1927, was paid for by one J. Allen Smith. Just before returning from Paris, the mayor drew $3,000 in excess of this amount. Senator Hastings and the mayor explain that the $10,000 represented a sum of money collected from the members of the party, which had been turned over to Smith in order that he might make an impression upon the officers of the bank. Neither was able to offer any explanation as to why Smith should have been called upon to pay the $3,000 overdraft, which he ultimately did with a check drawn on a Syracuse bank.

STOCK TRANSACTIONS

The second item involves the delivery to the mayor of $26,535 in bonds from Sisto & Company, brokers. Mr. Sisto testifies that he had met the mayor for the first time in Atlantic City in 1929, and at this very first meeting had sug-

gested to him that Cosden Oil was a good buy; that the mayor had said that he had no money for any such speculation, and that Sisto had said that he would carry it for him without any money; that subsequently a profit of some $26,000 had been made on some Cosden Oil purchased for the mayor in this manner, and that this profit had been turned over to him in the form of bonds. Sisto and his firm were actively interested in the Parmelee Transportation Company and other taxicab concerns. Mayor Walker admitted the receipt of these bonds.[1] He could see no impropriety in permitting an admiring broker to carry an account without his having put up any money or having signed anything that would have obligated him in case of loss.

There was also a question involving a stock transaction in which the mayor flatly contradicted his own park commissioner, Walter R. Herrick. According to Mr. Herrick, the mayor had arranged for participation in the purchase of stock in the Interstate Trust Company, which was being organized by the former governor of New Jersey, George S. Silzer; and he, Herrick, had purchased 350 shares of which 300 had been bought for the mayor and were ultimately transferred to J. Allen Smith, Frank Fageol, and Senator Hastings—all of the Equitable Bus group.

In the course of his testimony, the mayor did admit that he had received over $246,000 in cash from an account opened for him by Paul Block, the well-known newspaper publisher. This money was not banked but put in a safe in the mayor's home. Block explained that this generosity toward his friend the mayor had been prompted by the question of his ten-year-old son as to how the mayor could live on his salary, then $25,000.

SHERWOOD

The greatest difficulty that Judge Seabury found was in trying to establish a positive connection between Mayor Walker and the huge deposits of Russell T. Sherwood. Sherwood disappeared from New York when Mr. Seabury's investigators started to look for him. He was presently discovered in Mexico on a honeymoon, and has since completely disappeared. Sherwood, a $3,500 a year accountant, employed by the mayor's former law firm, had deposited upwards of $961,225 in the course of five and a half years. The day before Mayor Walker sailed for Europe in 1927, $250,000 had been withdrawn by Sherwood from this account. It was established that Sherwood had acted for the mayor in numerous instances, had been authorized to collect various counsel fees and withdraw collateral for him, held a safety deposit box jointly with him, had drawn checks for the mayor to Mrs. Walker and the mayor's sister and had made payments for him of $75,000 to "an unnamed person." But the mayor denied that he was in any wise involved in Sherwood's huge bank accounts or that he had any knowledge of Sherwood's having shared half of the fee of one Scanlan who sold snow removal equipment to the city.

FEES SPLIT WITH MAYOR'S BROTHER

It was also shown that the mayor's brother, Dr. William H. Walker, had deposited $431,258 in four years, and had shared in the fees of four of the

[1] Judge Seabury afterwards pointed out that these included ten bonds of the Reliance Bronze and Steel Company, which later received a contract from the city for traffic standards on Fifth Avenue. This constituted, in Judge Seabury's view, a violation of a section of the charter which declared that no city official shall become interested directly or indirectly in a company obtaining a city contract. The mayor had claimed that he gave these bonds to Mrs. Walker, but it was demonstrated that coupons of these bonds were deposited from time to time in Mayor Walker's own bank account.

six physicians designated by the city to render service to city employees entitled to workmen's compensation. He had joint bank accounts with two of them, and a safety deposit box with one. Dr. Walker is also a medical examiner of the department of education and a member of its retirement board.

The completion of the mayor's testimony marked the conclusion of this phase of the Committee's work, and adjournment was taken for the summer to permit a subcommittee to go ahead with recommendations for legislative enactment. Governor Roosevelt indicated through the press that he wished Judge Seabury to transmit the testimony to him. After a few days, eight volumes of testimony together with an analysis and a letter reducing the testimony to 15 specific accusations were sent to Albany. Upon receiving it the governor requested two eminent and independent Democratic lawyers, Martin Conboy and John E. Mack, to analyze the legal aspects of the testimony for him in order that he might make his decision. The governor made it clear that he regarded Judge Seabury's letter as constituting charges and that the responsibility was distinctly his own and that these lawyers were being appointed solely to assist him in analyzing the voluminous testimony. Various civic bodies incorporated the accusations in formal charges for removal.

The Attempted Recall of the Mayor of Los Angeles

AMIDST a welter of issues Los Angeles voters decide that Mayor Porter shall serve out his term

BY STANLEY ROGERS

Los Angeles, California

THE recall of Mayor John C. Porter of Los Angeles, contested mainly on the basis of his opposition to the municipally owned power plant, failed in the election of May 3, as it was doomed to do.

The recall petition, based on "inefficiency and incompetency" in office and unfriendliness to the interests of public ownership, was signed with such diverse hearty acclaim that out of more than 110,000 signatures only 53,000 were found to conform with the thoughtful details of the law. The motives actuating the petitioners in the calling of the election were, indeed, so diverse that they never lent themselves to unification or clear scrutiny in the public mind. Perhaps the recall had its inception in the mayoralty election of 1929, when Mayor Porter was placed in office by the wishes of some 20 per cent of the voters; for, ever since his induction into office, holders of many varied points of view have believed that the mayor was not a representative official.

His record during two years and nine months has consistently borne out this opinion. Few of his policies have met with general approval; or, rather, the mayor, blundering along, has demonstrated that through lack of proper experience, lack of political perspective, and probably through lack of native ability, he has been unable to formulate either practical or ideal political principle or policy. Going into office on a wave of church brotherhood politics, Mayor Porter immediately instituted a regime of "super snooping," through personal investigators working out of his own office, greatly to the embarrassment of the regular police force. The press has repeatedly charged that speakeasies, gambling, and the general activities of the underworld openly flourish in sight of the city hall. The mayor has disturbed, it is alleged, the general functioning of civil service rules, especially as they applied to Jews and Catholics, and dismissed from years of service the most efficient health officer the city has had.

CONFUSED ISSUES

In the matter of appointments to commissions, he has acted with singular stupidity, bringing into office men whose adaptability to governmental affairs has not been their chief virtue. And as regards appointments to the water and power commission he pursued a policy openly inimical to the best interests of public ownership.

This fact, alone, might have formed ample basis for a successful recall; but as the main issue it became further confused. The political "outs" wanted "in"; and back of the recall many citizens suspected the hand of a former boss. With the fall elections coming

up, calling for the selection of a United States senator, eight congressmen from Los Angeles County, not to mention thirty state assemblymen, four supervisors, thirty judges, a district attorney, and a vote on the wet-dry issue, could any one ambitious to be boss have spurned the opportunity to build up a machine? Unfortunately, too, for the interests of public ownership, the prohibition question and the illiberal views of the mayor pushed the success of the recall further into the background. Many citizens feared an "open" city. The "dry" element led by the Women's Christian Temperance Union, the Anti-Saloon League and the Prohibition Party, fearing that the "wet" candidate might be elected, and believing Mayor Porter the strongest of the "dry" candidates concentrated on him, not because they had any special confidence in the mayor, but because they feared the election of a "wet." From the point of view of the "wets," with the Olympiads before her, Los Angeles' sense of decent hostship dictated an entertainment of guests free from the unsportsmanlike "super snooping" tactics of the mayor. Many such citizens desired to rid themselves of the bad dreams of having permitted the election of a mayor so stupid, they said, as to threaten constant public chagrin before representatives of the world. For a moment, at least, the oblique light of the Comic Spirit fell upon Los Angeles revealing her absurdities to herself. As one journalist remarked, after all, dumb as Mayor Porter is, he is not an unfitting representative of the majority of the voters of Los Angeles.

To these lesser public perturbations, should be added two of more power in deciding the election. Many citizens, both "wet" and "dry," entertained a general feeling that the election was a misuse of the recall, since Mayor Porter had committed no criminal offense, and was a "well-meaning man, honest according to his lights," with but a little more than a year to serve. This group was encouraged by that press opinion which holds the law of the recall, and certain other progressive legislation, to be utterly pernicious. Of more significance was the failure of the associations friendly to municipal ownership to unify the issues and find a common, conservative basis of appeal in behalf of the power plant.

DEFENDERS OF MUNICIPAL OWNERSHIP BUNGLED

The leadership in the organizations whose function it is to promote the interests of municipal ownership, is at present unhappily dominated by men who belong to that political party which seizes upon any expediency to further its ends. These organizations and their supporting press committed themselves to a policy of arousing the public to a campaign of 100 per cent alarm. They magnified the smaller affronts of the mayor beyond reasonable belief; they endorsed the candidacy of Assemblyman Dempster, who attempted to thrive on hullabaloo tactics and a record of 101 per cent on questions of public ownership. By this endorsement, the associations rejected as candidate ex-president of the city council, Assemblyman William G. Bonelli, whom they had unanimously endorsed three years earlier. All in all, the municipal defense associations bungled their real opportunity through failure to keep the issue single, reasonably tenable, free from alarmists' propaganda, free from too radical point of view. They had, however, a cause sufficient to recall. The real issue lay in the mayor's treatment of the city power plant.

Los Angeles has the largest, most successful, municipally owned power plant in the world. Since 1917, it has saved the rate payers of the city $49,000,000 in comparison with the rates

charged by private companies in adjacent territory. In addition to this saving, by re-investment in the system of annual net profits, it has built up for the citizens an equity of $44,000,000 in a system whose total assets amount to $80,000,000. The $36,000,000 of bonds outstanding are being paid off by the department, both as to principal and interest, out of its net earnings.

The board, or commission, in charge of water and power is one of seventeen provided for in the city charter. Each is made up of five members, appointed for a five-year term, one term expiring each year. Appointments made by the mayor must be confirmed by the city council.

THE MAYOR AND THE WATER AND POWER COMMISSION

During the expired portion of his term of office, Mayor Porter, according to provisions of the charter, would normally have made only three appointments to the water and power commission, had circumstances permitted him to follow the charter in filling terms as they normally expired. Instead of three appointments, however, he has made nine which have been confirmed by the council, and a number which have been rejected. Some of these men have resigned, for one reason or another, and one was removed by the mayor.

Early in his incumbency, Mayor Porter, for reasons best known to himself, placed on the water and power board a majority of members who were very sympathetic with the private power companies. One of these members, it is asserted, so influenced a morning paper that it has since been the bitter enemy of the municipal power plant, criticising it in every possible manner, and advising the public to vote against power bonds. Naturally bonds were very essential to a plant which has expanded rapidly over the 449 square miles of the city of Los Angeles.

In appointing the uncoöperative members of the board, the mayor openly assumed a policy of aggressively hampering the city's power plant. At one time when he was approached by a friend of the municipal enterprise with the object of persuading him not to appoint to the board enemies of the city's plant, he told the citizen that he did not care if his appointees were friendly to the power companies, as his policy called for a balanced board. He further assumed the position that his personal wishes should constitute the policies of the board, an assumption directly contrary to the letter and spirit of the charter.

Shortly before the recall election, a vacancy had existed on the board for some months. As soon as it was found that the petitions contained sufficient signatures for the calling of an election, the mayor appointed a friend of municipal ownership to the vacancy, probably hoping to ingratiate himself with the public favorable to the enterprise. This gave control of the board, on the eve of election, to the friends of the power plant.

The recall election was confusion confounded. A month previously, as a result of the ready signing of the recall petition, it appeared that a majority wished for a change in mayors. As the campaign drew to a close, two candidates divided the opposition, and opinion crystallized in favor of the mayor retaining office for the remaining fifteen months of his term. Quite obviously, calmer minds did not accept all of the issues raised between the mayor and power commission; or they held that the city council, largely elected on platforms favoring public ownership, were under the charter able to protect the public property.

WHERE DOES THE MAYOR STAND?

Such proved to be the case in the aftermath. The day following the election, the mayor began to hear voices and see lights. Through the press he announced that he accepted the results of the election as the voice of God, and apparently looked upon himself as an ordained dictator, controlling all the actions of the commissions. For when an important question of administrative organization arose in the water and power board, he summarily removed two of the commissioners who refused to obey his commands.

The particular question involved was whether the department should continue to operate under a general manager, as it had been doing for about a year, or should return to the system of dual management, under which it had been very successful. The single manager plan, which subordinated the power department to the water department, though with separate financial accountings in each, had been put into effect in response to the mayor's demands at a time when the majority of the board were friendly to private power companies. This group claimed that the fiscal year ending June 30, 1931, had been the most successful in the history of the department, because the net profits of the power bureau increased by $119,000 over those of the previous year. As a matter of statistics, this profit was far below the increases established in previous years; for 1930 over 1929, had shown $597,000; while the increase of 1929 over 1928 was $565,000. The decrease in net profits in 1931 was largely due, it has been shown, to cessation of all advertising and other campaigns designed to increase business.

The majority of the present board believed that for the benefit of the city, and for efficient and economical management of the department, the dual system of control should be reëstablished and took action to that end. When the board failed to rescind its action in response to the personal demand of the mayor, two members of the commission were summarily removed. One of these was Dr. John R. Haynes, widely respected, wealthy patron of progressive legislation, father of the recall law in California, and defender of municipal ownership in Los Angeles. However, according to the charter, removals as well as appointments must be confirmed by the city council. The mayor sent the removals to the council, where they were referred to the water and power committee. This committee unanimously recommended that the two commissioners be retained in office, whereupon the council confirmed retainment by a vote of nine to six, in one case, and ten to five in the case of Dr. Haynes.

The mayor angrily gestured that he will campaign against ten members of the council when they come up for reelection. On second thought he proclaimed that the voice he heard was also that of the friends of public ownership, supporting his policies; hence, he will adopt their entire program. And to make good his word he immediately ordered the commission to proceed with all speed to the construction of a $12,000,000 stand-by steam plant at the Harbor. Looking to the sky he perceived a light, a light proclaiming reelection—though the outspoken friends of the power plant assert that it is only the reflection of the neon signs of the private power companies, obeisance to which would barter the municipal birthright.

Meantime Los Angeles, keenly alert, awaits the mayor's pot of message.

Portsmouth's Tax Installment Plan

INSTALLMENT buying applied to tax payments has several unique advantages

BY HAROLD I. BAUMES

League of Virginia Municipalities

WHILE municipal officials everywhere are perplexed by the problem of ever increasing tax delinquency and often are being continually harassed by the refusal of financial institutions to discount notes except at exorbitant rates of interest, it is encouraging to see that some cities have taken definite action to check the trouble at the source without appealing to the coöperation of any but the taxpayers themselves.

Portsmouth, Virginia, has apparently come to the very sane and logical conclusion that it is no longer necessary for cities to stand by and see their citizens pay for automobiles, radios, furniture and even clothes, on the installment plan weekly and monthly, and then at the end of the year find their suspicions confirmed that no money would be left in the pockets of many of these people to meet a large tax bill in one lump sum without borrowing. We pay for practically everything on the installment plan. Why not extend the practice to the payment of taxes where many of the objections to installment buying in general do not apply? For instance, there would be no inducement for a taxpayer to obligate himself to the city to any greater extent than he would otherwise for the tax bill is fixed on the basis of assessed valuation of property and there is no escaping it whatever method of payment may be followed. Moreover, by collecting taxes in small amounts weekly or monthly to suit the financial convenience of the taxpayer, not only will the people be relieved of a certain amount of apprehension concerning the payment of a large bill at the end of the year but tax delinquency will surely be reduced considerably.

Frank C. Hanrahan, city manager of Portsmouth, has devised a plan of tax deposits which has been approved by the council and has received hearty support from the press and the public. Taxes used to be collected November 1 in this city, and became delinquent December 1 with a penalty of five per cent, with interest added on such delinquency at the rate of six per cent beginning January 1. Since the tax-payment period is near the close of the year, the city has heretofore resorted to rather extensive short-term borrowing in order to finance its operations until November 1. This has been unusually costly during the past few years, and when large delinquencies in payments appear, further financing is necessary. To avoid the delinquency penalties numerous people have been forced to borrow from the bank at six per cent, thus incurring a penalty from another source for their inability to meet their tax bill in one lump sum.

Under the new plan the tax payment date technically will remain the same, but the opportunity is extended to all

taxpayers to pay their real estate and personal property taxes in advance in weekly, semi-monthly, monthly or semi-annual installments, at their convenience, to the city collector who credits their tax bills accordingly. Deposits made in advance in this manner are receiving interest at the rate of six per cent, the interest accrued at the end of the year to be deducted from the amount still owed on the tax bill. The interest rate has been fixed by the council, and depositors are given tax deposit books similar to Christmas savings bank books. The plan is not mandatory in any way, but the reception accorded it is indicative of the fact that the public is grateful for a modern method of paying for municipal services.

FOURFOLD ADVANTAGES

The advantages of this plan appear to be fourfold.

First, the taxes paid in advance remove the city's necessity to borrow so extensively in anticipation of taxes.

Second, the burden of taxes on the individual is lightened because of the opportunity extended to pay the bill in installments which bear interest at a higher rate than could be secured from deposits in banks.

Third, tax delinquency will surely be reduced appreciably because of the incentive to remit throughout the year.

Fourth, there is a patriotic motive involved which possibly will not be recognized at first, namely an effective weapon against hoarding. Money deposited in the city treasury will in turn be deposited in banks to draw interest at usual rates and will be placed in use. Those who have been accustomed to saving money at home in anticipation of taxes instead of depositing in banks will contribute to financial recuperation. While the actual amount of money involved will be small, the principle is great.

The high rate of interest on tax deposits is made possible by the interest drawn from the bank on installment payments deposited by the city, by the removal of the necessity for such extensive borrowing in anticipation of tax collections on the part of the city, and by the anticipated decrease in tax delinquencies at the end of the year. Bankers approve the plan because it will draw money back into circulation and into bank deposits by way of the tax collector's office.

During the two weeks the plan has been in operation, advance tax installment payments total about $40,000. With the aid of the hearty support of the press, and the able leadership of municipal officials, success seems assured. The plan is being extensively advertised and the enlistment of the aid of the public schools in disseminating facts concerning it is reported. It has been estimated that if all real estate taxes were paid in advance in Portsmouth, refund in interest of about $28,000 would be possible which would be the equivalent of a tax reduction of approximately 8.5 cents per $100 of assessed values.

This experiment may well be the forerunner of a modern and practicable tax collection system which will eventually be placed in operation in every progressive municipality. Provisions of this plan, which now make it permissive only, may sometime make it mandatory after its success and practicability have been proven beyond any doubt. At any rate, Portsmouth's action is being watched carefully by fiscal officials. Will the "tax deposit plan" be the solution of our growing tax delinquency problem?

Baltimore's Municipal Department of Music

THE municipal government aids community music

BY FREDERICK R. HUBER *Municipal Director of Music, Baltimore*

Too many Americans still regard music as a pastime for the intelligentsia; too many communities continue to consider the financing of this art as the sole concern of wealthy gentlemen who like to see their names cast in bronze. Such Americans will do little to advance the cause of music appreciation; such communities will continue laggards in the steadily expanding interest in this most democratic of the arts.

Baltimore, I am happy to say, is not such a community. For nearly a decade and a half, it has recognized a municipality's duty to its citizens where music is concerned; for a decade and a half, it has performed that duty through the excellent medium of a municipal department of music.

This department, so unique in bureaucratic activities of American municipalities, did not, however, give birth to several of the splendid musical groups that it now fosters. They are not the artistic children of the department; the department is a faithful guardian appointed by the municipal government to administer to phases of municipal music that it already had brought into being.

FIRST APPROPRIATION MADE DURING THE WAR

It was during the first year of the World War that the board of estimates definitely took a stand for the furtherance of municipal music in Baltimore and appropriated $8,000 for a city band. The following year, the appropriation was increased to $10,000, and community singing, supplemented by motion pictures of educational value, were added to the outdoor concert programs of the band. In 1916 great stimulus was given to the awakened interest in municipal music and civic pride was deeply stirred by a project to match the recently created municipal flag with a municipal anthem. A city-wide contest for a lyric was followed by a similar contest for a musical setting. Both contests carried an award of $250.

Baltimore was now music-minded. Summer band concerts, community singing, conducted in various parts of the city, the publicity accompanying the selection and the award for the municipal anthem, had combined to quicken the electorate's interest in music as an art.

It was in late October, 1915, that I became head of a committee to consider the project of a municipal symphony orchestra. The prospective personnel was assembled by Gustav Strube, a faculty member of the Peabody Conservatory of Music, who subsequently became the orchestra's first conductor. The city council appropriated $6,000 for the maintainance of the orchestra. I volunteered to serve in a managerial capacity without compensation. The

first concert was given in February, 1916. Mabel Garrison, Baltimore soprano and former prima donna of the Metropolitan Opera House, was the first soloist. The concert was given before a capacity audience, and was unanimously acclaimed. It was an auspicious birth of a project that still flourishes, unchallenged and wholly unique among the symphonic groups in America.

A MUNICIPAL DEPARTMENT OF MUSIC

These municipal activities pertaining to music and music appreciation were all inaugurated during the administrations of James H. Preston as mayor of Baltimore, and could not have been created or developed without his sympathy, encouragement and zeal. These activities were all accomplished without the aid of a departmental head charged by the city government with their administration. The same chief executive, who is so largely responsible for their being, was the first to realize the advisability of placing them under the jurisdiction of a single department, guided by a director responsible to him for their proper administration. He, therefore, brought about the creation of the municipal department of music. I was officially appointed director of the new bureau on May 16, 1918.

This department, now completing its fourteenth year, administers all of the city's constantly expanding activities in the field of music. The Municipal Band, which, by means of an ingenious portable band-stand, is enabled to give a widely scattered series of concerts throughout the city during the summer months; the City Colored Band, which renders a similar service to the Afro-American communities of the city; the Baltimore Symphony Orchestra which gives a series of concerts for adults during the winter months, a series of rehearsal concerts in the city schools, and a series of concerts for young people during the same period of the year; the recently organized City Colored Chorus and the City Colored Orchestra which have greatly stimulated their race's interest in good music through their joint concerts given during the past winter in the auditorium of one of the city's modern Negro high schools, are all under the supervision of the municipal department of music.

It is of interest and importance to note that this department, like the art that it fosters, knows no political party. Since its inception three mayors have guided consecutively the affairs of the city. The department has known four mayoralty inaugurations, each one involving a party change in city administration. This has not affected nor impaired in any way the policy or conduct of this department. Mayor Preston, who fathered the department, was a Democrat; Mayor Broening, who succeeded him, was a Republican; Mayor Jackson, who is currently at the head of the city government, is of the party of former Mayor Preston. The municipal department of music remains the municipal department of music, each succeeding chief executive of the city consistently ignoring all attempts to toss it into the political arena as a departmental football to be kicked about by job-seeking partisans.

In conclusion, may I say that it is my belief that Baltimore has successfully aided community music because Baltimore has had the courage to make its municipal music, music of the people, for the people, by the people, and paid for out of the people's pocket-book.

Modern Government in a Colonial City

Williamsburg, restored to the pattern of 1776, adopts 1932 manager government

BY JAMES E. PATE

College of William and Mary

WILLIAMSBURG, the colonial capitol of Virginia, was created a city in 1722 by a charter from King George. For this reason it is still called the "City of Williamsburg" in all legal papers, although the state constitution designates places of less than 5,000 population as towns. No small city of America has been surveyed as closely by engineers of all sorts, by city planning experts, by distinguished archaeologists and by well-known architects. The most recent survey was made by the Institute of Public Administration under the direction of Luther Gulick. The report has been published as a volume under the attractive title of *Modern Government in a Colonial City*.

The report recommended a council-manager form of government. A modified form of managerial government was accordingly drawn up by the city attorney with the assistance of the League of Virginia Municipalities. On Monday evening, February 29, a mass meeting of 300 citizens met in the city hall to discuss the new charter at that time pending before the legislature. The assemblage voted first to make every person who had enough interest to come to the meeting eligible to vote on the charter. The citizen body then voted to accept the charter as presented without submitting it to a vote of the people. In other words the mass meeting, like a Virginia constitutional convention, proclaimed the charter. It was indeed an interesting example of the people acting in their sovereign capacity.

It may seem incongruous to give a city, that the Restoration with such meticulous care is restoring to the pattern of 1776, a form of government which is the product of the twentieth century. A suitable compromise is made, however, in retaining the office of mayor. This official, freed of the details of government, will have leisure to receive with becoming dignity, probably in powdered wig and knee breeches, if Mayor Coleman is faithful to the colonial atmosphere, the large number of visitors that are now coming to these historic places which are so closely associated with the origin of the Republic.

THE COUNCIL AND MANAGER

The city charter very properly describes the council as "a body political and corporate, by the name of the City of Williamsburg." Consistent with orthodox city managership, the council is empowered to employ a manager for an indefinite term, but removable at the council's pleasure. In selecting a person with suitable "executive and administrative" qualifications, the council may, if necessary, go outside the city or the state. The section which provides that the city council may make rules and regulations, and prescribe the du-

ties of the employees of the fire department may be questioned as conforming to orthodox city managership. The manager is allowed to prescribe the uniforms and regulations for the city police, subject to the approval of the council.

The city manager is given the usual managerial duties of preparing the annual budget, of keeping the council informed as to financial conditions, and of recommending for the council's consideration such things concerning the city's affairs as he believes desirable.

It is the duty of the manager to act as chief conservator of the peace, but the city sergeant, designated by the new charter as chief of police, is elected by the people. It is the duty of the manager to supervise the administration of the city's affairs, but he cannot supervise properly the fiscal affairs of the city, because the commissioner of the revenue and the treasurer are elected by the people. In fact the supervision of these two fiscal officers seems to be regarded as a state function. The clerk of the circuit court, who also keeps the records for the city council and the county board of supervisors, is likewise elected by the people. The municipal personnel left under the manager's direction is therefore ridiculously small. At first the charter gave him the power to remove his appointees without any restrictions. But it was a happy thought of the local bar association to amend this by subjecting every removal to the council's review.

The separation of politics from administration has been regarded as one of the fine and fundamental principles of the city manager government. Some cities that desire to adhere strictly to the spirit of the plan take particular pains that politics shall not interfere with administration. A modification of the strictly managerial type of government may, however, be entirely justified in a small city or town where governmental problems are not so complex that the council cannot become reasonably acquainted with every administrative detail. But the student of government is at times taxed in classifying and finding the proper nomenclature for the variations that occur in political institutions. The Virginia Commission on County Government very happily, I believe, uses the term county executive to describe an executive controlled by the county board of supervisors, and reserves the term county manager for the strictly managerial system.[1]

A COLONIAL REGION?

Williamsburg and James City County will continue under the new charter to elect jointly a treasurer, a sheriff, an attorney for the Commonwealth, and a clerk of the circuit court. This *modus vivendi* is highly desirable and commendable. The Institute of Public Administration, with the cordial support of the state departments of health and public welfare, suggested that the city of Williamsburg, and the counties of James City, York, Charles City, and New Kent might consolidate their health and welfare functions. This plan of consolidation of functions is eminently practicable. It has been tried out successfully in Virginia in regard to care of paupers.

It is not entirely chimerical to believe that the consolidation of all governmental functions in the counties named, with Williamsburg as the seat of this colonial region, would rehabilitate the local government to such an extent that it would be able to look after its local affairs efficiently and economically.

If such a consolidation of functions were made, the historic counties would still exist by name for the purpose of electing representatives to the regional board; or according to the recommenda-

[1]Report of Commission on County Government, Richmond, 1931, pp. 18 and 19.

tion of the Institute, each county might maintain its board of welfare, the chairman of the several boards acting for common purposes. A region composed of James City, Charles City, New Kent, and York Counties would have an area of six hundred seventy-nine square miles, and a population of only 20,215 people. The total value of all property assessed for purpose of local taxation in these four counties is $9,664,000. The total amount of receipts from these counties for the year 1930 was less than one-half million dollars. In other words the total area, population, and wealth of the region would not be above that of the average single county.

Two important provisions of the new charter, particularly in view of the restoration work, are those on city planning and zoning. A commission appointed by the city council acts as both a city planning and zoning commission. The power of the city to plan and to zone is extended one and one-half miles beyond the corporate limits. A provision for appeal is made in the charter for persons aggrieved at any zoning ordinance or its application by the commission.

TAXES AND FINANCE

The state constitution provides that property shall be assessed at fair market value for the purpose of taxation. But the practice is contrary to this. In Williamsburg property is assessed at 32 per cent of its market value. The Institute of Public Administration points out that the assessed value of property must be increased to 66 per cent of its market value in order to make the borrowing power of the city sufficient to finance needed improvements.

Virginia's experience with the executive type of budget, adopted by the state government in 1918, on the whole has been so satisfactory that a law was passed by the general assembly in 1926 requiring all counties and cities of the Commonwealth to prepare budgets. But the small towns and counties have been decidedly handicapped because of the poor bookkeeping and accounting methods. Bookkeeping in the local units of government is unduly complicated by the numerous special tax levies which require the keeping of separate accounts. The state auditor has found as many as sixty-four separate funds in a single county. A close and effective audit by the state, however, is correcting many bad fiscal practices in the local governmental units. A recent survey by one of the members of the state auditor's staff shows that budgetary practice and the status of the sinking fund of the city of Williamsburg is in a more satisfactory condition than it was over a year ago, when the Institute of Public Administration made its survey.

PUBLIC IMPROVEMENTS

A thorough survey was made of the needs of the city in regard to paving, cleaning and lighting of streets, sewage and waste disposal, water supply, and fire protection. Recommendations were made in each instance by the Institute as to the method of financing the improvement.

At present Williamsburg gets its water supply from deep wells. The Institute pointed out that a more palatable and less injurious source of water might be obtained by tapping nearby streams at a cost of $410,000. It was suggested that the college, the city, and the local hospital should coöperate in this undertaking.

This brief analysis of the government, finances, and engineering problems of Williamsburg has not, of course, included a description of the remarkable work that is being done to restore the city to its attractive colonial appearance.

Reproduction Cost and Falling Price Levels

FALLING prices do not strengthen the validity of the reproduction cost concept of fair value

BY GEORGE E. GOLDTHWAITE *New York City*

THE rate-making power of public utility commissions, legislatures and other governing bodies has for more than a generation past been limited by a ruling of the United States Supreme Court that a rate (for electricity, gas, telephone, water supply or transportation) imposed by a regulatory authority, which does not yield a fair return on the "fair value" of a privately owned utility plant, will be held confiscatory and in violation of the 14th amendment to the Constitution. Although no positive rule for determining "fair value" has been laid down by the court, it has in various decisions given reproduction cost a good deal of weight, along with original cost and other factors. In recent years courts have seemed to give preponderant weight to reproduction cost less depreciation, using that measure almost exclusively in certain cases, with emphasis on the statement that it is the *present* value of the property that is to be determined. These decisions have held out to companies the possibilities of enormous profits, because after the great rise in prices during and since the War, the reproduction cost of almost any utility property could be established at a figure enormously in excess of the actual original cost. This was due to the large amount of property surviving from pre-war years, which had been installed at approximately half or less of the post-war cost of reproduction.

EDITOR'S NOTE: A paper read before the Round Table Conference on Regulation, held in New York, April 8-9.

REPRODUCTION COST AND PRESENT PRICE LEVELS

Now, however, the situation has changed. Practically all public utility companies have (except possibly street railways) installed large amounts of plant at the very high costs prevailing since the War. During the past two years construction costs have declined greatly following the recent general drop in price levels. It is apparent, therefore, that the reproduction cost today of property installed at the high post-war prices would be a great deal less than its actual cost, and it appears possible that the tremendous profit-making advantage which the court rulings gave to utility companies may now be turned against them to their loss, possibly to their ruin. There is no attempt here to discuss the merits of the reproduction cost theory of rate-making, but only to comment on the possibilities of its application at present price levels.

In order to forestall disappointment with what follows, I state now that this paper will not disclose the precise result of applying reproduction cost today as compared with earlier years. I have not made an extensive research; furthermore I believe that there is as yet

very little satisfactory data on actual construction cost since the recent large declines. I shall use only published figures readily available to all, describe their limitations and qualifications, and perhaps draw certain tentative conclusions.

A reproduction cost estimate, as usually and I think most stupidly made, purports to show the cost of constructing at present-day prices a plant substantially identical with the existing one in all details. The company's expert deducts from this, if anything, only the observable physical deterioration; the one on the public side attempts, sometimes, to bring this reproduction cost down to a reasonable value by a large depreciation deduction. I think, however, that the starting point is wrong, and that exact reproduction should never be computed except for such plant as would be reproduced today to fulfill today's requirements. This view in many cases would substantially affect reproduction cost estimates and should be kept in mind when discussing the effect on reproduction cost of price levels.

With this warning I will introduce some figures. The wholesale price index number of the United States bureau of labor statistics, if based on 100 as the 1913 average, rose to about 240 in 1920, but dropped quickly to an average level of about 142 in the years 1923-1929 inclusive and dropped to 95 in February of this year, approximately its present level. This represents a drop of 33 per cent from the post-war plateau price. The average level of wholesale commodity prices as expressed by this index number is quite distinctly below the pre-war level of 1913; furthermore it is, or was in February, still declining.

Perhaps at this point I should explain the chronological periods I am using in making cost and price comparisons. I have used 1913 to express the pre-war level, although of course the curves were not all level in 1913 by any means. I believe it is reasonable to use it because on the whole there had been no large general price changes for some years past, and there appeared at that time to be no distinct trend upward or downward, except the general upward trend apparent if figures were carried forward from 10 or 20 years previously. For the so-called post-war plateau of prices I have used the average of years 1923 to 1929 inclusive, thereby avoiding the violent changes in the immediate post-war period, and avoiding also the decline that began in the latter part of 1929. For present day prices I have used either February or March of this year (1932). When I refer to present prices, it should be understood that I speak of February or March as I have not attempted to bring my figures entirely up to date.

UNSATISFACTORY INDEX NUMBERS

The United States wholesale price index number is of course not an index of construction costs and cannot be taken even as an approximation thereof because, first, it leaves out the very important element of construction labor and, second, because while it includes construction materials, they are far outweighed by other commodities that have little or no importance in utility construction work.

The United States wholesale price index has been used and recommended as one of the best general expressions for the value of the dollar. As such it might be of importance in figuring the return to which owners of a property are entitled on the general theory that the owners are entitled to more compensation in dollars when the value of the dollar drops below what it was when they made their investment, and vice versa. This is a plausible theory, but it has nothing to do with reproduction cost and I will not discuss it here.

The construction cost index number

computed and published monthly by the *Engineering News-Record* attempts to supply the two outstanding elements mentioned above that are lacking in the wholesale price index number. This index is constructed so as to represent at any time the average cost of cement, structural steel, lumber and construction labor, relative to their cost in 1913, the latter being taken as 100. The items are weighted so as to express, in the judgment of those who are responsible for the number, a reasonable approximation of the average use of these elements in general engineering construction work.

According to the *Engineering News-Record* index, which is based on 100 as the 1913 average, construction cost rose to a maximum of 274 in June, 1920, but declined to an average level for the post-war plateau period somewhat above 200, and has dropped to about 160 at present, or 23 per cent below the post-war plateau. Two outstanding differences between the construction cost and commodity price index numbers will be noted. The first is that the post-war plateau level of construction costs was nearly 50 per cent higher than that of wholesale prices. This fact is familiar to many of you who have attempted to check or compare reproduction cost estimates by applying wholesale price index numbers to actual costs over a period beginning before the War. The wholesale price index number method of course gives a much lower result than the reproduction cost estimate. The second outstanding difference is that the drop since 1929 in the construction cost index is only 23 per cent as against a 33 per cent drop for wholesale prices, and the construction cost index has shown a marked drop only in recent months, though wholesale prices started steeply downward in August, 1929. These comparisons are subject to some qualifications which I will describe later and I believe that the real drop in construction costs is much more than 23 per cent, although I cannot say how much.

TREMENDOUS VARIATIONS

It may be interesting to consider prices of a number of raw materials entering largely into utility construction, especially as they show such tremendous variations. Copper at a present price of about 6 cents has dropped 58 per cent from the post-war plateau level, and even there it was distinctly below the 1913 price of copper. It would be difficult to say, however, what the real pre-war or post-war average price of copper really is, as it has been subject to most violent and extreme flucuations as far back as I can find any record, and apparently has never stabilized itself even for a short period at a price which is reasonable compared with the cost of mining, smelting and refining. It is interesting to note that although it is one of the most important raw material items in the electrical industry, the post-war cost of electrical machinery has been quite high and has apparently been little affected by the comparatively low price of copper. It does, however, have a large bearing on the cost of the electrical distribution systems in congested areas, where copper cable is the principal item.

The present price of lead at 3.75 cents shows a 51 per cent drop from the post-war plateau level, and is at present below the 1913 average price. The present price of structural steel beams in Pittsburgh, not including any fabrication, is exactly the same as the 1913 price, and reflects a 26 per cent drop from the post-war plateau. Steel has been comparatively cheap since the War and did not take a very large drop in order to reach the pre-war level. Of course, when you add freight and fabrication costs, the post-war price is relatively much higher and the present drop in price for steel work installed is, I sup-

pose, considerably less than that expressed for steel shapes at the mill. Cast iron pipe at $28.20 in New York City has dropped 42 per cent from the post-war plateau, and is at present only only about 20 per cent higher than the 1913 price. This is an item of greatest interest to gas and water utilities, and it is extremely interesting to observe the present low price in view of the fact that the post-war plateau price of this product was more than 100 per cent above the 1913 level and showed practically no indication that it ever would again drop. Common brick in New York City has dropped about 35 per cent from the post-war plateau, but still is about 80 per cent above the pre-war level. This is one of the items that has as yet shown little indication of returning to pre-war levels, but it should be remembered that relatively less brick is used today in engineering construction than formerly and there are prospects of new materials which may still further replace its former use. Portland cement has dropped 21 per cent from the post-war plateau and is still considerably above the 1913 level.

LABOR FLUCTUATIONS

It is in labor, however, that the greatest of fluctuations have occurred, and it is in labor where the least satisfactory data are available for constructing index numbers. For instance, according to the *Engineering News-Record,* which purports to show actual rates rather than the ineffective and misleading quoted rates, common labor in New York during the post-war plateau was 80 cents per hour as compared with 22½ cents before the War, a ratio of 3½ to one; at present it has dropped about 19 per cent to 65 cents an hour. In Chicago, however, the post-war plateau rate of 85 cents was only a little more than twice the pre-war rate of 40 cents. The decline there since the post-war plateau has been about 25 per cent. This means that if you constructed an index number based on New York labor, your relationship to 1913 would be far wrong if you attempted to apply it to Chicago. Furthermore, the fluctuations in skilled labor and common labor are widely divergent. The rate for structural iron-workers in New York today is given as $1.92, which is 24 per cent greater than the post-war plateau, and the present rate is more than three times the pre-war rate. It appears that you can get any desired result in labor index numbers by simply picking your figures from various geographical areas and various kinds of labor.

WEAKNESSES OF INDEX NUMBERS

There are at least three great faults to be found with the use of index numbers to figure construction costs. The first one is that as usually constructed they make no allowance for changes in the efficiency of labor; second, they make no allowance for changes in the amount of labor used on the job resulting from increased use of machinery to replace labor; and third, they give little or no regard to the change in the kind of plant that would be constructed today compared with the kind of a plant that was actually constructed many years ago and to which the index numbers are expected to apply.

For instance, I will mention an electric generating plant in Chicago in which I worked a short while in 1911. This plant was, at the time it was built in 1910, a tremendously large and ultra-modern plant, containing a dozen or so vertical turbo generators of 14,000 kw. capacity each, with the usual large batteries of comparatively small boilers and reciprocating engine-driven auxiliaries. I do not know whether the identical machines or even that particular plant is there at present, but I do know of some parallel instances which would excuse its use as an illustration. If you would apply an index number to the ac-

tual cost of that plant you would perhaps obtain the present day cost of constructing that identical plant, assuming that the construction force would go through identically the same motions in the same length of time as they did in 1910. Such a reproduction cost would without doubt be greatly in excess of the actual cost in 1910 of constructing that plant.

However, many things have happened in the past twenty years to make that method and that result absurd. In the first place, even though a substantially identical plant were to be constructed today, more machinery and correspondingly less labor would be used in its construction, and the cost would thus be reduced. The principal advantage of using construction machinery and the impetus behind its great development in recent years is to avoid the excessive labor costs that would result from the use of old methods with the present high cost of labor. In the second place, there is little doubt that at present the efficiency of the labor would be distinctly different than in 1910. This is a factor that should not be ignored. Labor is almost always found to accomplish more per man-hour in times of depression and unemployment than in more prosperous times.

But the third and greatest difference arises from the fact that no such plant would be constructed today as was built in 1910. The cost of building an identical machine today may be twice as much as it was in 1910, but no such machine would ever be constructed. Instead of units of 14,000 kw. each, units ten times that size would be installed to fulfill present day requirements in the same location, and the cost of these per unit of capacity would be much less than the pre-war cost per unit, due simply to the tremendously greater size of the units and the higher speed at which they would operate, both of which act to reduce the unit cost. Large individual boilers would be used, instead of the multiple batteries of small boilers, and furnaces would be installed to obtain twice or more steam output per unit of heating surface. All this means today a much smaller boiler plant for the same output. Moreover, the actual amount of steam required for the same electrical output is a great deal less today than in 1910; consequently even if you used the same boilers as in 1910, you would not need so many boilers. Practically no reciprocating auxiliaries would be used; instead there would be the far more compact and economical electric and turbo units. The amount of building required per unit of capacity would be reduced to a fraction of the former amount due to the increase in the size of units and the resulting greater compactness. This fact has been illustrated again and again, where old turbo generators have been removed and new ones several times as large have been installed in the same space. The final result would be a plant which, expressed in capital cost per kw. of capacity, would cost a great deal less than the actual cost of the plant built in 1910, although according to all price level studies the reproduction cost of the old plant would be a great deal more.

TODAY'S PLANT MORE EFFICIENT

But this is not the whole story. The plant built today would be enormously more efficient and therefore of far greater real value than the 1910 plant, so much so that the 1910 plant (unless greatly modernized in the meanwhile) would be practically worthless from an operating standpoint; that is, even if the 1910 plant were today as good as it was when it was new, you could probably afford to discard it entirely and build a modern plant on the basis of the capitalized savings in operating expenses. While this last point is not di-

rectly related to a price level discussion, it illustrates the crowning absurdity of a valuation method which attempts to take account of nothing except the changes in labor and material costs without recognizing that the same materials would not be used.

My reference to a particular plant should not be taken as an unfavorable reflection on that plant. I do not know that an appraisal of the plant I referred to was ever made; therefore I use it as an imaginative example just to avoid sour reflections on specific companies that I have investigated, where the reproduction cost method has been carried to the height, or depth, of absurdity.

The general idea just developed would apply to many other classes of utility property, not only to the individual units, but to a utility system as a whole; although the electric generating plant is perhaps the most easily understood example. And although my illustration was of a plant built in 1910, the comment would be applicable to plant built in any year between then and now, the result differing only in degree, for invention and development have been continuous, and so have changes in public requirements, all resulting in inadequacy and obsolescence of old plant.

There has been much criticism and disparagement by utility advocates of what has been called the "substitute plant theory," and some of the criticism has been embodied in court decisions. I believe the criticisms are unsound. Reproduction cost as a measure of value of existing plant cannot be logically justified except to the extent that existing plant would be reproduced to furnish today's requirements. Wherever today's requirements could be satisfactorily met with new plant costing less than the reproduction of old, there is nothing except a stupid reliance on court precedent that justifies use of the higher figure.

PRESENT PRICES AND THE RATE BASE

I have made an interesting calculation to indicate the possible effect of present prices on a rate base. Assume a utility plant having a net growth in dollars of 5 per cent each year, beginning before the War. The reproduction cost of this plant at the present date, obtained by the index method, using the *Engineering News-Record* construction cost index number, would be approximately the same as or perhaps somewhat less than actual cost. (The exact effect depends also on the rate of retirements.)

Now if the reproduction *value* be obtained by deducting depreciation, it is apparent that the pre-war plant would have a far greater deduction for depreciation than the post-war plant. Depreciation, however, would eliminate most of the pre-war plant, and as a result the reproduction cost less depreciation by the index number method would beyond doubt give a substantially lower total value than book cost less a straight line depreciation reserve.

If reproduction costs were further adjusted in accordance with criticisms heretofore made; that is, if a modern plant were assumed to replace the old one, built by modern methods, the result would be to push the present value even further below the book value.

The above statement applies to a plant having the very modest average net growth of 5 per cent annually. With a past record of 6 per cent or greater annual growth it seems quite probable that present value, based entirely on present day costs and present day materials, would give a rate base so low that its enforcement would bankrupt a conservatively financed public utility company. And if the company had no adequate depreciation reserve, but only a retirement reserve, its plight would indeed be hopeless.

There are several factors that will act to prevent such an outcome, however. One is that the present cost level is a

thing of the moment. Companies will argue vigorously against applying present-day costs when there is no proof that costs will remain at their present level for a considerable future period. The argument is always available that reproduction cost is only one measure of value, and that the Supreme Court has never ruled as to the weight that must be given it. There is also the large margin of controversial costs and values always present in valuation cases. Overhead costs can be argued for far in excess of actual capitalized costs, as they have been in the past. Going value is sufficiently elastic to fill almost any void if the commission or court can be persuaded to use it. The arguments against rational methods of measuring depreciation, or against any depreciation deduction whatever, will be pushed more strenuously than ever. And the rate of return offers just as effective and much less obtrusive means than valuation of arguing for higher rates. An eight per cent return on a utility property that could have been financed at an average rate of six per cent gives the equivalent of a 33 1-3 per cent inflation in the rate base.

What Municipal Home Rule Means Today

VII. Texas After Twenty Years

WHAT the cities may do and what they may not do still needs clarification

BY FRANK M. STEWART *University of Texas*

The Texas Constitution of 1876 provided that cities and towns with a population of ten thousand inhabitants or less should be chartered by general law, and cities with more than ten thousand inhabitants should have their charters granted or amended by special act of the legislature. In accordance with an amendment adopted in 1909 cities of five thousand inhabitants might obtain charters through special acts of the legislature.

HOME RULE AMENDMENT

Dissatisfaction of cities with the methods of charter making established by these constitutional provisions led to the submission by the legislature, in 1911, of a home rule amendment, which was approved by popular vote on November 5, 1912. Article XI, section 5, which has never been amended, reads:

> Cities having more than five thousand (5000) inhabitants may, by a majority vote of the qualified voters of said city, at an election held for that purpose, adopt or amend their charters, subject to such limitations as may be prescribed by the legislature, and providing that no charter or any ordinance passed under said charter shall contain any provision inconsistent with the constitution of the state or of the general laws enacted by the legislature of this state; said cities may levy, assess, and collect such taxes as may be authorized by law or by their charters; but no tax for any purpose shall ever be lawful for any one year which shall exceed two and one-half per cent of the taxable property of such city, and no debt shall ever be created by any city unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon and creating a sinking fund of at least two per cent thereon; and provided further, that no city charter shall be altered, amended, or repealed oftener than every two years.

The home rule amendment has been criticized by academic writers and journalists, for its ambiguity, limitations, and incompleteness.[1] McBain thought the constitutional amendment itself "by no means unambiguous." James commented on the brevity of the amendment, resulting in obscurity and uncertainty, and stated that "there is scarcely a line of it that does not contain the germ of a constitutional con-

[1] H. L. McBain, *The Law and the Practice of Municipal Home Rule,* 649-655 (1916); H. G. James, "Home Rule in Texas," *Texas Municipalities,* V, 67-76 (1918); A. A. Long, "Home Rule in Texas," *Texas Municipalities,* VI, 10-19 (1919); E. R. Cockrell, "Municipal Home Rule with Special Reference to the State of Texas," *Southwestern Political Science Quarterly,* I, 147-154 (1920); Tom Finty, Jr., "Constitutional Handicaps of Texas Cities," *Texas Municipalities,* IX, 21-25 (1922).

troversy." Specifically, he pointed out that the amendment does not indicate how the population of a city is to be determined for home rule purposes, and that the legislature has not provided a method. The meaning of a number of phrases in the amendment is not clear and unambiguous, e.g., "a majority vote of the qualified voters of said city," "at an election held for that purpose," and "or by their charters." The provision that "no charter or any ordinance passed under said charter shall contain any provision inconsistent with the constitution of the state or of the general laws enacted by the legislature of this state" leaves the measure of local self-government enjoyed by cities dependent on legislative good will and generosity. The last sentence of the amendment prohibiting changes oftener than every two years is unduly restrictive.

A. A. Long noted that the constitution is silent on the procedure for initiating the home rule machinery and that no direct provision is made for a state authority to pass upon the subject matter or legality of a home rule charter. The amendment leaves unsettled the question whether cities which have invoked the home rule act are deprived of the right of seeking legislation otherwise than by the procedure outlined in the home rule plan. Finty complained of the handicaps imposed on home rule cities by the tax limitation of the amendment, and referred to it as the "Home Ruin" amendment.

A survey of the operation of municipal home rule, as conditioned by legislative practice and judicial interpretation, will indicate the extent and meaning of the system today.[2]

[2] In the preparation of this article I have had the use of a master's thesis at the University of Texas on "Municipal Home Rule in Texas," prepared by Miss Mary Evelyn Winfrey, of Houston.

ENABLING ACT

At the first legislative session following the adoption of the 1911 amendment, an enabling act was passed. This statute which covers almost ten pages of the session laws reproduces in section one the text of the constitutional amendment and then outlines the procedure for framing charters and adoption of amendments. A lengthy enumeration of powers of cities is prefaced by the statement: "That by the provisions of this act, it is contemplated to bestow upon any city adopting the charter or amendment hereunder the full power of local self-government." After listing "for greater certainty" many powers which cities may exercise the statute concludes with this declaration: "The enumeration of powers hereinabove made shall never be construed to preclude, by implication or otherwise, any such city from exercising the powers incident to the enjoyment of local self-government, provided, that such powers shall not be inhibited by the Constitution of the State." It is further provided that "All powers heretofore granted any city by general law or special charter are hereby preserved to each of said cities, respectively, and the power so conferred upon such cities, either by special or general law, is hereby granted to such cities when embraced in and made a part of the charter adopted by such city, and provided, that, until the charter of such city as the same now exists is amended and adopted, it shall be and remain in full force and effect." Thus, it is purely optional with each city to adopt a home rule charter or amendment.

An examination of legislation since 1913 will reveal, as McBain suggested, whether the legislature has made "the principle of home rule a vital and comprehensive reality" or transformed it "into a hollow mockery."

CHARTER ACTIVITY AND VALIDATION

Texas cities have almost unanimously elected to accept home rule privileges. Of 83 cities over 5,000 population according to the 1930 census, all but eleven have adopted charters or amendments under home rule provisions. Thirteen cities that the census of 1930 records as having less than 5,000 population have filed home rule charters or amendments with the secretary of state. The city manager form of government is found in 43 cities; the commission form in 24; and 18 operate under the mayor-council plan.[3]

Twenty-four cities accepted the home rule amendment as self-executing and proceeded immediately to adopt charters or amendments before the passage of enabling legislation in 1913. These premature proceedings were validated by general law in 1915.

A similar statute was enacted in 1917. A law of 1918 validated the charters of those cities whose population had been ascertained as five thousand "according to an official census taken under the direction and supervision of the city council." Special laws in 1919 and 1920 validated the charters and acts of incorporation of three cities, specifically named. General acts validating all charter amendments and all proceedings had with reference thereto or held under such charters and amendments were enacted by the legislature in 1919, 1920, 1921, 1925, and 1929. The last act included in the validation "all bonds issued under any amendment where the bonds have been approved by the attorney-general and registered with the comptroller." In 1930 "all elections, election orders, election proceedings, and city ordinances annexing adjacent territory to, or extending and prescribing the corporate limits" of any city which had adopted a charter under the home rule amendment and enabling act, "but which city did not in fact have a population of five thousand according to the 1920 federal census," were validated.

This practice indicates that many cities are doubtful about the legality of their methods of acquiring home rule status. To avoid litigation city attorneys appeal to the legislature for confirmation, which is usually granted. That such validation has little significance is indicated by the decision of one of the courts of civil appeals holding void an ordinance violative of a general law of the state which had been passed under a charter provision validated by the legislature.[4]

SPECIAL LEGISLATION

Adoption of the home rule amendment and enabling act did not immediately stop the legislative practice of granting charters and amendments to cities which did not choose to exercise their home rule powers. The same legislature which passed the enabling act, 1913, amended by special acts the charters of three cities. Special laws affecting the incorporation and charters of seven cities were enacted from 1915 to 1920. A complete charter was granted to a West Texas city in 1917. This act was declared unconstitutional by the Court of Civil Appeals of Amarillo, in December, 1919, the court holding that it violated the home rule amendment to the constitution, in that it deprived the inhabitants of the right to adopt or amend their charter by a majority vote of the qualified electors. The legislature had no power to pass such an act since "By the amendment the power theretofore granted the legislature to pass local laws incorporating cities was withdrawn, and the power was vested in the voters of such cities

[3]The records of the secretary of state are probably incomplete. No penalty is provided for failure to file charters or amendments.

[4] City of Lubbock v. Magnolia Petroleum Co., 291 S. W. 660 (Civ. App. 1927).

to adopt and amend their charters."[5] This decision, which was affirmed by the Supreme Court in 1921, ended the practice of granting charters and amendments to home rule cities by special laws.[6]

GENERAL LAWS

The home rule amendment permitted the legislature to pass general laws affecting cities. A review of such legislation affecting municipal finances, utilities, safety, welfare, and the police power, will indicate the nature of this regulation.

Cities may levy and collect an annual poll tax, not to exceed one dollar, of every inhabitant between twenty-one and sixty years of age; may invest sinking funds in bonds of the United States, war savings certificates, treasury certificates, and other securities; no city bonds shall ever be held invalid because signers of bonds were not in office at time of delivery to purchaser; and all incorporated cities, towns, and villages must operate under a budget system.

No state regulation of all local utilities exists, but appeal may be taken to the railroad commission from any order of a city reducing the rates of natural gas utilities. Consumers of electric power or natural or artificial gas furnished by private companies have the right to demand the reading and testing of meters by city employees. Cities owning their own waterworks systems have the power to condemn private property inside or outside the city limits for the purpose of bringing water for the use of the public. A city may acquire land, within or without the corporate limits, not to exceed 640 acres, for airport purposes. To maintain and operate the same it may levy and collect a special tax not to exceed for any one year five cents on each $100 valuation.

Fire escapes must be installed on certain buildings in cities, and city fire chiefs or marshals are directed to assist in the enforcement of the act. Fire hose couplings and fire hydrant hose outlets must be uniform in all cities having public fire protection.

A tax not to exceed five cents on each $100 of assessed valuation may be levied by any city council for the purchase and improvement of lands for use as parks, provided that the number of parks shall not exceed two for each two thousand inhabitants. If more than one park is established, they must be located in widely separated portions of the city. A tax not to exceed five cents on the $100 of assessed valuation may be levied for maintenance.

The legislative body of cities may pass zoning regulations; provide for the segregation of the white and negro races; and condemn property for highway purposes. No city may require registration fees of the owners of motor vehicles, or motorcycles, but they may regulate the use of motor vehicles for hire within their limits. The rate of speed of motor vehicles within the limits of an incorporated city shall not exceed twenty miles per hour. A law of 1927, amended in 1929, required that city traffic officers, when making arrests for speeding, must be mounted on a motorcycle and be wearing a diamond shaped badge and a uniform, consisting of a cap, coat, and trousers of dark grey or blue color. Objections of local officials secured an amendment in 1930 exempting cities with a population of less than 10,000 from the provisions relating to motor equipment and uniform. The law was held unconstitutional by the Court of Criminal Appeals in 1931, though not on the basis of home rule.[7]

[5] State v. Vincent, 217 S. W. 402 (Civ. App. 1919).

[6] 235 S. W. 1084 (Comm. App. 1921); see also Ex Parte Norton, 21 S. W. 2d. 663 (Crim. App. 1929), and King v. State, 289 S. W. 69 (Crim. App. 1926).

[7] Scoggin v. State, 38 S. W. 2d. 592 (Crim. App. 1931).

A year after the adoption of the home rule amendment the cities organized the League of Texas Municipalities. One of its purposes is to prevent encroachments on the home rule rights of cities. Within recent years the League has successfully opposed certain bills for state regulation of local utilities, a bill to declare local ice plants public utilities, and other measures considered objectionable by the cities. On the whole, interference in municipal affairs, through general laws, while objectionable in principle, has not been unduly restrictive nor produced any violent revolt on the part of home rule cities.

CLASSIFICATION OF CITIES

As McBain foresaw, the legislature has resorted to the practice of classification of cities. Some of this legislation has been regulatory, but the major part of it has had for its purpose the conferring of additional powers upon cities of a certain class. The most common basis of classification has been population, but the type of charter and location with reference to waterways and the boundaries of the state have also been used. A few examples will illustrate.

In cities containing 25,000 inhabitants or more, and maintaining paid fire departments, no fireman shall be required to be on duty for more than six days in any one week, except in cases of emergency. Firemen in cities of 30,000 inhabitants or more shall be allowed 15 days vacation in each year, with pay, not more than fourteen men to be on vacation at the same time. In all cities and towns, incorporated by general or special laws, or under any other law or provision of the constitution, having a population of 50,000 or more, no member of the local police department shall be required to serve on actual duty longer than eight hours in every twenty-four hour day, except in cases of emergency. An act of 1919 created a firemen, policemen, and fire alarm operators' pension fund in all cities over 10,000 population and provided for its administration.

Other legislation has conferred powers on cities of a certain class with reference to extension of city limits, consolidation of adjoining cities, platting of surrounding territory, construction of artificial lighting systems, safety zones, plumbers' licenses and leasing of city lands for oil or other minerals.

Enactment of laws affecting only one city, under the form of a classified statute, has increased rapidly within the last few years. All cities of 100,000 population or more, situated along or upon navigable streams, and owning or operating municipal docks, wharves, or warehouses, may provide by ordinance for the appointment of pilot boards and have exclusive jurisdiction over the pilotage of boats between the Gulf of Mexico and their respective ports. This act applied to Houston, the only city in that location and population group. Any city of over 43,000 population, located in a county of less than 100,000 "to which the State of Texas or Republic of Texas shall heretofore have granted any island, flat, or other submerged lands" is granted authority to lease them under certain conditions. Galveston alone met these specifications. Special laws for Dallas and San Antonio have also been passed under the form of classification.

Recent laws have applied to cities located in counties with a population between 7,500 and 7,750; and between 14,588 and 14,800. Another act affected any city between 11,000 and 11,500 population located in counties situated on a boundary of the state of Texas.

A statute of 1930 sought to confer certain powers upon cities having not less than 106,000 and not more than 110,000 inhabitants according to the

census of 1920. Fort Worth was the only city that could ever meet these population requirements. The law was declared unconstitutional in 1931. The court did not hold invalid the general practice of classification, but it did object to the method of classification used in the law. A law so drawn that it can be made to apply to but one city in the state and never to any other city, is as much a special law as if the name of the city has been written into the act.[8]

Practically all of these classified laws are enacted at the instance of municpal officers. Several reasons are given for resort to legislative enactment instead of charter amendment. It is frequently done to circumvent local opposition; it costs less than a local election, and gets around the limitation that charters may not be changed oftener than every two years. It also satisfies any doubt as to the authority of local officials to act.

JUDICIAL CONSTRUCTION

In view of the usual policy of strict construction applied to municipal corporations the courts of Texas have construed liberally the home rule amendment and also legislation and charters adopted in accordance with its provisions. Space will permit a review of only a few of the most important decisions of the appellate courts.

It was very early declared that the home rule amendment was self-enacting and that its provisions became effective immediately upon its adoption by the people. There was no necessity for the legislature to pass an enabling act.[9]

Since the adoption of the home rule amendment, the source of the powers of cities has been changed. The legislature no longer delegates powers to city councils; it may only limit their powers. The powers of the corporation are derived directly from the constitution and not from the legislature. A city no longer has to look to the legislature for a grant of power to act, but only look to see if the legislature has placed any limitations on the power to act granted by the home rule amendment. If the legislature has placed no limitations on the power of a city to act, and the provision is inconsistent with no provision of the constitution or general laws of the state, the power of the city is as general and broad as is the power of the legislature to act.[10]

In agreement with the above, the Court of Civil Appeals of Amarillo further extended the freedom of the city from legislative interference. A city charter is not a law passed by the corporation; it is a law of the state with the same status as any enactment of the legislature, and, in "purely municipal matters," the provisions of the charter are supreme over all laws of the state in conflict, though subject to the constitution. "The limitation forbidding the adoption of charter provisions contrary to the public policy of the state, as declared by general laws, does not forbid the adoption of charter provisions as to any subject appropriate to the orderly conduct of municipal affairs, although they may differ in details from those of existing general laws."[11] But it has been held that a city may not legislate on matters not of purely local concern.[12] No court has

[8] City of Fort Worth v. Bobbitt, Attorney General, 36 S. W. 2d. 470 (Comm. App. 1931); see also Cameron v. City of Waco, 8 S. W. 2d. 249 (Civ. App. 1928).

[9] Le Gois v. State, 190 S. W. 724 (Crim. App. 1916); Xydias Amusement Co. v. City of Houston, 185 S. W. 415 (Civ. App. 1916).

[10] Le Gois v. State, 190 S. W. 724 (Crim. App. 1916); Xydias Amusement Co. v. City of Houston, 185 S. W. 415 (Civ. App. 1916); Miller v. Uvalde Co., 20 S. W. 2d. 403 (Civ. App. 1929).

[11] Community Natural Gas Co. v. Northern Texas Utilities Co., 13 S. W. 2d. 184 (Civ. App. 1928).

[12] City of Arlington v. Lillard, 294 S. W. 829 (1927); City of Amarillo v. Green, 267 S. W. 702 (Comm. App. 1924).

yet given a definition of "purely municipal matters."

In view of these clear statements it is difficult to understand why the legislature continues to confer additional powers upon cities and why cities seek such legislation.

It has been stated that "The state constitution, enabling act, and the general laws of the state *in pari materia* constitute the fundamental laws of home rule cities and rank in order given."[13]

Charters and ordinances of cities incorporated under the home rule act must be consistent with the constitution and statutes.[14] This provision of the amendment does not compel prospective interpretation of its terms but may be given retrospective effect. The legislature did not insert the words "hereafter adopted" after the word "charter" in the constitutional amendment.[15] An ordinance may not prescribe a greater or less penalty than the state law.[16]

Any city may legislate upon any subject of municipal activity not regulated by the constitution or general statute. When a general law is passed, applicable to all cities of a certain class, then no city in the same class is authorized to enact contrary legislation.[17]

A home rule city has the right of independent existence; the legislature may not authorize a city between 100,000 and 150,000 population to annex forcibly an adjoining city of more than 5,000 people. Cities acquire home rule rights when they attain a population of 5,000, and the legislature cannot provide that the population is to be determined on the basis of the last United States census.[18]

Extension of the boundaries of a city in accordance with the city charter is not an amendment of the charter and hence is not in conflict with the provision of the amendment preventing charter changes oftener than every two years.[19] In the adoption or amendment of charters a majority of the votes polled at an election is sufficient.[20]

Finally, the purpose of the home rule amendment has been declared to be that of securing "a convenient and direct method of city government."[21] Its language is to be interpreted according to its usual and popular meaning; it was not written for lawyers and judges alone.[22]

POWERS OF CITIES

In interpreting the powers of cities the courts have shown a tendency to defer to the spirit of the amendment and enabling act. As to general powers it has been held that a home rule city may exercise all powers incident to local self-government, not prohibited by the constitution and laws. Cities may do all things the legislature could have authorized, not in violation of the constitution and general laws.[23]

By the terms of the enabling act cities have the power to fix their boundary limits, and provide for the extension of such limits and the annexation of adjacent territory. The

[13] Cameron v. City of Waco, 8 S. W. 2d. 249 (Civ. App. 1928).

[14] City of Sweetwater v. Foster, 37 S. W. 2d. 799 (Civ. App. 1931).

[15] Ex Parte Norton, 21 S. W. 2d. 663 (Crim. App. 1929).

[16] Brewer v. State, 24 S. W. 2d. 409 (Crim. App. 1930).

[17] City of Beaumont v. Fall, 291 S. W. 202 (Comm. App. 1927).

[18] City of Houston v. City of Magnolia Park, 276 S. W. 685 (Comm. App. 1925).

[19] Eastham v. Steinhagen, 243 S. W. 457 (1922).

[20] Shaw v. Lindsley, 195 S. W. 338 (Civ. App. 1917).

[21] City of Wichita Falls v. Continental Oil Co., 1 S. W. 2d. 596 (Comm. App. 1928).

[22] City of Waco v. Higginson, 226 S. W. 1084 (Civ. App. 1921).

[23] City of Denton v. Denton Home Ice Co., 27 S. W. 2d. 119 (Comm. App. 1930); Bland v. City of Taylor, 37 S. W. 2d. 291 (Civ. App. 1931).

former power of the legislature to extend city limits was conferred on the voters in cities of over 5,000 population, by the home rule amendment.[24] Territory may be annexed without the consent and even against the remonstrance of the residents of such territory.[25] Agricultural lands may be included within the boundaries of a home rule city.[26]

In the field of public utilities a city may issue bonds to establish waterworks outside of the city limits;[27] purchase waterworks machinery;[28] create a public utilities department;[29] and manufacture ice.[30]

Municipal regulations for the protection of public health have been reviewed in several cases. A city ordinance imposing additional burdens to those required by the state law upon plumbers within the city is in conflict with the state law and void.[31] An ordinance requiring employers and employees in food products establishments to submit to medical examination has been upheld, as well as one providing for the regulation and inspection of barber shops, and the physical examination of barbers.[32]

A city's control over its streets is limited only by the constitution and general laws. It may prohibit the sale of merchandise on public squares or streets, provide that an alley may be used only by pedestrians and prohibit its use by vehicles; regulate and license jitney busses; restrict the operation of motor busses to certain streets; and absolutely deny the use of its streets for the prosecution of a business such as that of a public carrier for hire.[33]

In the creation of public debts the courts have insisted that cities satisfy the requirements of the amendment. A state law authorizing a city improving streets to acquire assessment certificates or mechanic's lien agreements and issue special improvement bonds based thereon is unconstitutional as creating a debt against the city without making provision to assess annually a sufficient sum in taxes to pay the bonds.[34] Bonds issued for water, sewer and permanent improvements may not be used in payment for engines purchased for municipal electric light plant.[35]

Zoning in Texas cities has met with some judicial opposition.[36]

[24] Eastham v. Steinhagen, 243 S. W. 457 (1922).

[25] Cohen v. City of Houston, 176 S. W. 809 (Civ. App. 1915).

[26] City of Waco v. Higginson, 243 S. W. 1078 (Comm. App. 1922).

[27] Cameron v. City of Waco, 8 S. W. 2d. 249 (Civ. App. 1928).

[28] Sowell v. Griffith, 294 S. W. 521 (Comm. App. 1927).

[29] Moore v. Logan, 10 S. W. 2d. 428 (Civ. App. 1928).

[30] City of Denton v. Denton Home Ice Co., 27 S. W. 2d. 119 (Comm. App. 1930).

[31] Massachusetts Bonding and Insurance Co. v. McKay, 10 S. W. 2d. 770 (Civ. App. 1928); Parrish v. Wright, 293 S. W. 659 (Civ. App. 1927).

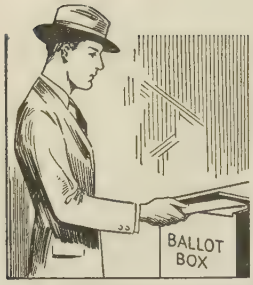
[32] Langley v. City of Dallas, 252 S. W. 203 (Civ. App. 1923); Hanzal v. City of San Antonio, 221 S. W. 237 (Civ. App. 1920).

[33] City of San Antonio v. Fetzer, 241 S. W. 1034 (Civ. App. 1922); West v. City of Waco, 275 S. W. 282 (Civ. App. 1925); City of Dallas v. Ingram, 284 S. W. 345 (Civ. App. 1926); City of Dallas v. Gill, 199 S. W. 1144 (Civ. App. 1917); City of San Antonio v. Stokes, 246 S. W. 706 (Civ. App. 1922).

[34] City of Fort Worth v. Bobbitt, Attorney-General, 41 S. W. 2d. 228 (Comm. App. 1931).

[35] Texas Electric and Ice Co. v. City of Vernon, 266 S. W. 600 (Civ. App. 1923).

[36] See Irvin Stewart, "Zoning and the Courts in Texas," National Municipal Review, XIII, 321-325 (1924); Continental Oil Co. v. City of Wichita Falls, 42 S. W. 2d. 236 (Comm. App. 1931); Scott v. Champion Bldg. Co., 28 S. W. 2d. 178 (Civ. App. 1930); Lombardo v. City of Dallas (1932), unreported; McEachern v. Town of Holland Park, 34 S. W. 2d. 676 (Civ. App. 1931).



PROPORTIONAL REPRESENTATION

EDITED BY GEORGE H. HALLETT, JR.

Continuing the Proportional Representation Review

The Michigan Amendment.—The Democratic party of the state of Michigan is presenting to the voters this year a condensed program of nine short planks, the fifth of which is:

> Election reform with minority representation as a cure for bureaucratic evils.

Former Assistant United States District Attorney Walter I. McKenzie of Detroit was appointed by the party's recent state convention to serve as chairman of a committee to secure the adoption of the constitutional amendment referred to in our last issue, which would prescribe proportional representation for the state house of representatives and legalize it for other purposes. The committee was given "full authority to act and, if the legislature failed to provide for a vote on the amendment, ... to raise funds, prepare and submit initiatory petitions, and conduct the necessary educational campaign."

Mr. McKenzie is planning to organize a nonpartisan committee, including prominent Republicans who believe that more adequate representation of the opposition party and of the different elements in their own party would be beneficial, and to bring the question to a vote at the spring primary next April.

The proposed amendment (much of which continues present provisions with suitable modifications) reads as follows:

Amended Article V, Section 3

The house of representatives shall consist of not less than sixty-four nor more than one hundred members. Representatives shall be chosen for two years. For the election of representatives, districts shall be created of convenient and contiguous territory. Each district shall contain as nearly as may be not less than three full ratios of population nor more than seven full ratios of population. No county shall be divided in the formation of such legislative districts unless such county shall be equitably entitled to more than seven representatives. Each district shall elect as many members as it has full ratios of population. An elector shall help elect one representative by a system of proportional representation which the legislature shall prescribe. In every county containing more than seven full ratios of population the board of supervisors shall assemble at such time and place as shall be prescribed by law, divide the county into representative districts as herein provided and cause to be filed in the offices of the secretary of state and clerk of such county a description of such representative districts, specifying the number of each district, the number of representatives to be elected therein, and the population thereof according to the last preceding enumeration.

Article III, Section 9 (New)

Nothing in this constitution shall be interpreted to prohibit the use of preferential voting, or, where two or more members of a representative body are elected from one district, restricting the number of members an elector may vote for in order to produce proportional or minority representation.

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Socialist Party of America.—The Socialist party national platform, adopted by the national convention in Milwaukee in May, contains a list of "Constitutional Changes" advocated, beginning:

1. Proportional Representation

Taken in connection with the Democratic party's action in Michigan and the Republi-

can party's approval of P. R. in New York City (reported in the *Proportional Representation Review* for April), this reaffirmation of the Socialist party's traditional stand on the question emphasizes the all-party character of the movement for true representative government.

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League of Women Voters.—The Pennsylvania League of Women Voters has moved "City Manager Plan and Proportional Representation" from its program for study to its program for support in the program of work for 1931-1932. A similar step is being proposed in Ohio. The support of the New York City Leagues was recorded last month. P. R. is on the national study program of the League and has in fact of late years received its support after appropriate study wherever it has become an issue. Miss Belle Sherwin, national president, and Mrs. Carrie Chapman Catt, former president, are members of the advisory council of the Proportional Representation League.

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P. R. in College Elections.—To Professor Howard White of the department of government and politics at Miami University, Oxford, Ohio, we are indebted for a report on the use of P.R. for the university's student-faculty council elections. Each spring six men students, six women students, and six faculty members are elected by the Hare system for the ensuing year. There have now been four elections. The plan was introduced at Professor White's suggestion in 1928, at which time student government affairs were completely dominated by a coalition of fraternities and sororities. The opportunity for minority representation at once brought into the field a "liberal" group in opposition and both groups have increasingly bid for "independent" support by placing students not connected with fraternities and sororities on their tickets. The representation has been rather evenly divided, with independents regularly among those elected. This spring an independent was runner-up for president of the council and was chosen vice-president.

This experience of Miami with P. R. is very similar to the experience of Northwestern University, described by Earl H. De Long in the *Proportional Representation Review* for October, 1930. Among the other institutions of higher learning using P. R. for student or student-faculty council elections are the University of Nebraska, University of Pittsburgh, the University of Colorado, Mt. Holyoke, Barnard, Antioch, and Loyola (Chicago).

*

Other Private Elections Here and Abroad.—The number of private organizations using P. R. continues to grow. Among those not reported earlier in the *Proportional Representation Review* which have recently used the plan are the Allied Boards of Trade of Allegheny County (including Pittsburgh), Pennsylvania, the Washington (D. C.) Academy of Sciences, the Chemical Society of Washington (D. C.), the Optical Society of America, the Society of American Foresters, and the Cleveland lodge of the Brotherhood of Railway Clerks. The Pennsylvania State Education Association has used the Hare system for the election of its officers, committees, and delegates to the National Education Association each year for the last eleven years. The Bar Association and Lawyers' Club of Cincinnati uses the Hare system of preferential voting in its bar primary for the selection of candidates to endorse for judicial office.

A report of the British P. R. Society gives the following organizatons as using the Hare system, either as a system of P. R. for committees or as a system of preferential voting for officers or both: "the Civil Service Confederation, the National Council of Women, the Independent Labour Party, the National Union of Clerks, the National Union of Railwaymen, the National Union of Teachers, the National League of Young Liberals, the London Liberal Federation, the Yorkshire Liberal Federation, the Royal Arsenal Co-operative Society, and other co-operative societies, the Congregational Union of England and Wales, the London Congregational Union, the Unitarian and Free Christian Churches, the Dental Board of the United Kingdom, the Nottingham City Business Club, the Northern Colliery Officials Mutual Aid Association, the Students Union of the London School of Economics, the Students Advisory Committee of Morley College, London, the Engineers Staff Association of H. M. Office of Works.

"A further very important application of P. R. was the election of proctors for the clergy in all dioceses in England. These proctors, with additional *ex officio* members, form the

Lower Houses of Convocation in the two provinces of Canterbury and York, and the two Convocations sitting together form the House of Clergy of the National Assembly of the Church of England." The House of Laity of the Church of England was also elected by P. R. for the first time in the summer of 1930.

A notable adoption of P. R. in Australia is for the large Tramway Employees' Association of New South Wales.

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Calgary Makes Unique Use of Preferential Ballot.—Last fall the city of Calgary, Alberta, which has used P. R. for its council elections every year since 1917, used the same form of ballot to determine the city's form of government. The ballot reads as follows:

City of Calgary
Voting November 18th, 1931
Plebiscite re City Manager

Vote by placing the figure 1 opposite your first choice.

Vote by placing the figure 2 opposite your second choice.

Vote by placing figure 3 opposite your third choice.

Are you in favor of a *city manager* form of government for the city of Calgary, by which a city manager to be appointed by the city council shall be responsible for the administration of the city and the control of all the departments of the city except the departments of the city comptroller and the city clerk?

Are you in favor of the continuation of the present form of *elected commissioner* government in the city of Calgary?

Are you in favor of the city commissioner, other than the mayor, being appointed by the city council, the said *appointed commissioner* to act in conjunction with the mayor in the administration of the affairs of the city?

The existing elected commissioner form received a clear majority of first choices, which made it unnecessary to transfer the votes of the alternative which received least support. The province of Alberta used the same general plan a few years ago to determine public sentiment as to the form of provincial liquor control.

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Armidale, New South Wales.—The city of Armidale successfully carried out its second P. R. election on December 5. . . . There was unprecedented interest in the election and a record poll. Three years ago there was a certain amount of hostile criticism of P. R. This year there was none. . . .

Of the total formal votes of 1,979, no fewer than 1,775 assisted in electing an alderman. Compare that with Canterbury, for example, where a bunch was elected with 61,459 votes, while 84,936 votes elected nobody.

At Canterbury the number of electors voting was 12,199, and they had each to vote for 12 candidates, with the result that a minority elected the council. A considerable majority of the electors got nothing for all their time, trouble, and expense in taking part in that election. Attention is specially directed to the number of wards and municipalities where the votes of a minority prevailed while the majority were disfranchised. These examples show the urgent need for proportional representation for local government elections.—*The Standard,* Sydney, January 15, 1932.

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Proportional Representation an Issue in Japan.— The world-wide business depression brought about a beneficial by-product in Japan which happens to be an election reform. The present government is with all seriousness considering the question of reforming the present archaic and abuse-ridden election system, not primarily motivated by the desire of reforming it for its own sake, but prompted by the necessity of curtailing expenses incident to parliamentary elections and of lessening financial burdens of candidates running for parliament. As a matter of fact, the question of election reform has been arresting the attention of the public in general of late, but the retrenchment policy accelerated the process of bringing about this change at this time.

At the close of 1931 the department of home affairs directed the bureau of prefectural affairs to make the most thorough and extensive study of the various systems of election in use throughout the world and to make such a recommendation as the bureau deems fit and proper to make for consideration by the legislative committee on law-drafting. The bureau has published a brief report recommending most heartily the adoption of the system of proportional representation to replace the majority system[1] for parliamentary elections.

So far as we can surmise, members of the

legislative committee on law-drafting are in agreement with the suggestion made by the bureau and tentatively decided upon adopting the list system of proportional representation, based principally upon the German practice with a slight modification taken from the Belgian practice.

The committee is at present busily engaged in preparing a final draft of the election reform bill; however, it is highly doubtful whether it will have it ready for the present session of parliament.—*Koichi Hasegawa,* Osaka, May 12, 1932.

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P. R. and Good Government in Cincinnati. (Reprinted from signed articles in the Cleveland *Press* for April 4 and 5).—A political success, far more significant even than the machinery of the manager plan, underlies Cincinnati's good government during the last six years.

Plenty of American cities have had reform movements and reforms, all of them in fact, only to see them slipping back after a few years or months, with the discouraged citizenry standing on the side lines, wringing their hands, and moaning "What can you do about it? Nothing. Politics is politics."

Cincinnati residents did something about it. They organized, beat the old party bosses, and shared a miracle—the return of faith to the hearts of the people of a great American city, that the ballot matters, that it can be used effectively to take government from the party bosses and put it back into the hands of the people.

And today, the independent voters of Cincinnati cannot be discouraged. Last fall they lost an extra councilman, the vote for the nine-man council elected four for the old bosses, instead of only the three which had been lost by the charter defenders in the previous elections under the manager plan.

The unrest of depression and a dissatisfaction with the auditor's appraisal of real estate, unjustly thrown at the door of the Charter Committee, are given as the reasons for the loss of the extra councilman.

But, whatever the causes, there is no discouragement. The Charter Committee, the name retained by the charter defense crowd, is merely making extra plans for a thorough job in the campaign of 1933.

This is a people's party, this Charter Committee. It shows all of the political vitality of the old city parties, in fact a lot more than is being shown right now by the Republican party of Messrs. Schneller and Schorr, which has had six long, hungry years.

The Charter Committee has a paid secretary and a paid staff. It raises a budget for steady, effective between-campaign propaganda.

There is a party organization of 5000 workers. There are precinct captains in most of the precincts. Yet nobody gets a dime. And not a single officeholder is a party worker. . . .

Henry Bentley, president of the City Charter Committee, and the only political "boss" who has done any effective bossing in Cincinnati in the last six years, ascribes the success of the Cincinnati plan to three elements:

The small Council (nine).

The election of councilmen at large (instead of by districts) by proportional representation.

The City Charter Committee. . . .

Bentley gives great credit to P. R. as a political device. His enthusiasm goes so far that he would let proportional representation take the place of primaries.

"The primary has become just about the rottenest thing in American city politics," says Bentley.

"I would make it easy for candidates to get nominated by petition. Then I would let the preferences, which the primaries are supposed to take care of, be worked out under P. R. voting. You then have the equivalent of compulsory participation in primaries. Anyone who votes has to express a preference."

It is notable that I heard no growling about P. R. in Cincinnati. All the charter crowd, and they now control elections, are P. R. enthusiasts.—Carlton K. Matson, associate editor of the *Cleveland Press.*

[1]According to our latest reports the system now in use is not, strictly speaking, a majority system, though the candidates receiving most votes are at once declared elected. Three or more are elected from a district and the voter votes for only one. This "single non-transferable vote" is itself a crude form of proportional representation, since a large minority can elect its proportionate share if it does not divide its vote among too many candidates. It is, of course, inferior to the list, and particularly to the Hare systems of P. R.—Ed.

RECENT BOOKS REVIEWED

PRINCIPLES OF PUBLIC UTILITIES. By Eliot Jones and Truman C. Bigham. New York: The Macmillan Company, 1931. 799 pp. $4.25.

This book is interesting as well as thorough, useful to the general reader as well as to the specialist, unbiased in its treatment of the subject, broad-visioned in its perspective, and a most worthy addition to the existing treatises on this subject. It is wisely limited to a consideration of electric light and power, gas, street railway, telephone and water utilities. An interesting historical survey, followed by a clear-cut discussion of the peculiar characteristics of public utilities, is presented by way of introduction to the general subject. Regulation, rate structures, the movement for consolidation, public relations and public ownership are then treated in a varying degree of detail.

Of special significance in the treatment of regulation by commissions is the discussion of the appropriate division of functions between the municipal, state and federal governments. Departing from a conventional discussion of state public service commissions and their functions, the authors take the point of view that while state regulation will become increasingly important there is opportunity, on the one hand for more effective sharing of control by local governments and on the other, there is increasing need for federal regulation in those fields which are beyond the constitutional authority of the states to control. Advocacy of state regulation of the accounting, but not of the rates, services and financing, of municipally owned utilities, indicates an understanding perception as to the proper handling of this unsettled problem. The chapters dealing with the technical problems of regulation such as valuation, rate of return and regulation of accounts and reports and of securities make full recognition of the fact that regulation has failed thus far to safeguard adequately the public interest.

The authors, while they do not advocate public ownership as a panacea for the present shortcomings of privately owned utilities, conclude that proper public policy calls for the establishment of the clear and unhampered right of cities to engage in public ownership and for cities (and other government units) to make themselves ready for municipalization by learning to operate their affairs on business principles with the minimum intrusion of politics.

If any adverse comment is to be made of a treatment, which is generally satisfactory in its point of view, it is that the authors have not applied their critical analysis with sufficient keenness in dealing with the subject of relations with the public and customer ownership.

FREDERICK L. BIRD.

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LUXURY TAXATION AND ITS PLACE IN A SYSTEM OF PUBLIC REVENUES. By Ralph Burnett Tower. Special Report No. 4 of the New York State Tax Commission, Albany, 1931. 235 pp.

This is the fourth special report prepared for the New York state tax commission in accordance with the plan adopted by the commission in 1928 of establishing university fellowships in taxation. Dr. Tower, the author of the present study, was the taxation fellow at Cornell University.

Preliminary chapters treat successively the definition of luxury, the nature and history of modern luxury taxes, and the economic theories of luxury taxation, after presenting the theoretical of luxury taxes in operation today in the several states.

Consideration is given first to the tobacco taxes. This chapter is an excellent summary

of the tobacco tax provisions for each one of the eleven states employing this type of revenue measure. The administrative procedure in each state is critically reviewed; the operation and effectiveness of the tax appraised in each particular instance. A final chapter deals with the possibilities of luxury taxation for the state of New York. While a more penetrating analysis on the actual operation of luxury taxation would have been desirable, the difficulties attendant upon this type of investigation are well nigh insurmountable. The study as a whole is well executed.

Some of the conclusions of the author may be summarized as follows: The widespread enactment of luxury tax legislation among the states dates back only to 1921, and present evidence indicates that future growth is likely to be slow; actual experience shows that the burden of these taxes ordinarily falls upon the ultimate consumer; luxury tax administration is more effective in the North than in the South, due mainly to the illegal evasion of the tobacco tax in the latter area; calculations as to cost of collections are practically impossible, except in a few instances, and here the indications are that such taxes are no more expensive to collect than income taxes and other direct state levies; ordinarily the consumer does not offer strenuous objection to luxury taxation, unless business men and politicians create false impressions about them; taxes on malt, fountain drinks, cosmetics, playing cards are either undesirable or unsatisfactory.

MARTIN L. FAUST.

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THE MERCER COUNTY PLAN: A GUIDE FOR FUTURE DEVELOPMENT. Prepared by The County Planning Commission, with Russell Van Nest Black, Consultant, 1931. 110 pp.

The recent advances in the application of regional planning technique are well exemplified by the Mercer County Plan. Lying midway between the great regions comprised in the New York and the Philadelphia Tri-State regional plans, this particular county conforms sufficiently closely to the region suitable for planning as a unit. Furthermore, if every county in New Jersey was similarly planned the principles of regional planning would thereby be applied to all the interlocking and overlapping regional areas that comprise the state.

The present plan, which is styled on the inside title page "A Master Plan," naturally stresses those phases in which the greatest concrete results can readily be obtained at the moment; transportation by highway, parkway, rail, water and air, and recreation, particularly as provided for by scenic river valley and forest parks and golf courses. No plan for regional zoning is included, but it is hinted at on an existing uses map, which shows also "most probable area of expansion of general development, area most adaptable to industrial development, and area comparatively ill adapted to general or industrial development." Considerable space is devoted to ways and means of financing and executing the various features of the plan, an indispensible accompaniment to any technical proposal, but too often in the past ignored or slighted.

ARTHUR C. COMEY.

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PUBLIC HEALTH ORGANIZATION. E. L. Bishop, M.D., Chairman. White House Conference On Child Health and Protection. New York and London: The Century Company, 1932. 345 pp. $3.00.

Out of the noteworthy conference on child health assembled by President Hoover in November of 1931 have come a number of brilliant reports. This particular study is unquestionably one of the outstanding publications issued to date.

Marshalled in it are the opinions of a distinguished committee of sanitarians and public health authorities regarding public health service and administration, federal, state, municipal, rural, and non-official. Also included are excellent chapters on the training of public health personnel, the place of child health activities in health programs, the relation of physicians and dentists to such programs, the health aspects of food control (except milk, for which a separate volume will be issued), and the function of research.

After a presentation and discussion of a mass of data, accompanied by a profusion of useful tables, the book sets forth a number of essential principles and policies. In one or two instances there are dissenting opinions, particularly with respect to the place for child hygiene activities in the federal government and the principle of federal subsidies for state health activities, but in the main these con-

clusions offer a sound basis for future progress in public health administration in this country.

That part of the report dealing with city public health organization is much more complete and detailed than those portions dealing with state and rural organization. The section on federal health work is well done, although its authors somewhat arrogantly neglected to mention previous extensive studies on this important subject, and one or two of their recommendations were responsible for much controversy.

James A. Tobey, Dr. P.H.

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Southampton—A Civic Survey. Edited by P. Ford. London: Oxford University Press, 1931. 98 pp. $10.

One advantage of unofficial town planning activities is that, under some circumstances at least, they may more readily maintain a broad, far-seeing outlook and they may be able to present their conclusions more adequately in published form. In the Foreword to the *Southampton Civic Survey* it is stated that a civic survey, while a necessary preliminary to the preparation of a sound scheme of town planning, "as a rule can only be undertaken by voluntary effort." The present work was, however, carried out "with the knowledge and approval of the town authorities," a most advantageous arrangement. Its vital import is predicted on the statement that "the notion that town planning is a matter merely of providing fresh roads for developing traffic is long dead; and it is now recognized that it is an endeavor to guide the town's growth in the light of the forces which shaped its past and will affect its future."

The report, which is sumptuously printed and copiously illustrated with photographs and a series of graphic maps, therefore, stresses historical and geological aspects as well as the more familiar matters of land utilization, port development, communications, housing, open spaces, education, and utilities. As is usual in British town planning studies, much attention is paid to basic sociological factors, such as a detailed study of income groups, particularly in relation to housing, and population shift. British problems are not essentially different from those in America. A study of their methods cannot help stimulating a re-valuation of American practices.

Arthur C. Comey.

Home Finance and Taxation. The President's Conference on Home Building and Home Ownership. Washington, 1932. xiv, 278 pp. $1.15.

Many who buy their own houses have so little money and so few means of borrowing except at prohibitive rates, that any financial set-back forces them to give up their homes and to sacrifice their investment. This and kindred problems are studied in the report of the Committee on Finance, perhaps the most important committee in the President's Conference.

Having as its motto the statement that "Every American family which so desires and is able financially should own their own home," the committee points out clearly the risk in making too small a down payment and in mortgaging too large a part of the income of the purchaser. It also discusses at length the great costs of junior financing and of foreclosures. The recommendations are that at least 25 per cent of the total cost should be paid in, that the running expenses should not exceed 25 per cent of the family income, and that if a second mortgage is necessary, it should be paid off before expiration. A good deal of attention is paid to taxes as burdens on the home-owner and suggestions are made for relief.

Emanuel Stein.

New York University

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Special Assessments in Detroit. By George Adams Graham. University of Illinois, Studies in the Social Sciences, Vol. XVII, Nos. 3-4, Urbana; University of Illnois, 1931. 318 pages (including 19 figures and 12 plates). $2.50.

This volume constitutes a welcome addition to the scanty literature available on special assessments. In spite of the fact that its scope has been deliberately limited by the author to a discussion of special assessments for street and alley paving and for street openings and widenings in one city, it adds more to the sum total of human knowledge on the subject than most of the broader excursions in the same field.

After two chapters dealing with the theory of special assessments and with the types of questions to which administrators must formulate answers in their efforts to apply the theory, Mr. Graham describes the procedures in Detroit for street paving and alley paving.

He criticizes justly and pointedly the rigid procedure prescribed for street paving assessments in the charter of that city. He points out that the apportionment of paving costs, less costs of intersections, on abutting properties in proportion to frontage, cannot possibly result in assessments in proportion to benefits; and that the council, in the exercise of its powers to modify assessments levied in this manner against irregular lots, merely adds to the confusion. He asks pertinently, in passing, why street paving should be handled in a different manner from street openings and widenings, and then goes on to discuss assessments for alley paving, which under the provisions of the same charter are made in proportion to benefits.

The succeeding five chapters are devoted to a general discussion of the problems confronting the Detroit officials in the levy of assessments in proportion to the benefits conferred by street openings and widenings. The general procedure is outlined; the general principles deducible from the results of that procedure are first stated and then evaluated; a standard practice, formulated on the basis of the general and special problems encountered in the specific cases studied, and modified in the light of wide and analytical reading, is proposed; the best current thought on the essentials of administrative organization, and of personnel administration, is clearly stated. These chapters constitute a very real contribution to the thinking in the field, and deserve a fuller review than is here possible. Some of the conclusions will undoubtedly be questioned, but an unprejudiced reader must admit that the analysis on which the conclusions are based is searching and enlightened, and broad in scope. The reviewer ventures the suggestion that, if hilly Cincinnati had been selected for intensive study rather than level Detroit, topography would have been included among the independent variables which are pointed out in the chapter on standards as affecting the shape and size of benefit districts, and the flow of benefits among the individual parcels within the districts.

The final chapters describe the specific assessment projects which were subjected to analysis—thirty-three street openings and widenings, and five alley pavings. The value of this part of the study is increased because the information presented is not confined simply to the manner in which the levies were spread. It includes also general information on land uses, population density, rate of growth of population, other thoroughfares in the neighborhood, total costs of property acquired, and the percentage of the costs borne by the city at large. For each project, the assumptions relative to benefit on which the spreads seem to have been based, are summarized.

Since the conclusion in 1929 of the field studies on which the volume is based, certain basic problems have emerged which were not apparent at that time. Detroit, like many other American cities, finds itself in financial difficulties. Some of the very improvement projects described by Mr. Graham have no doubt contributed their quota to the deficiency in revenue collections which produced the stringency in the finance of that city. It is to be hoped that Mr. Graham will some day find time to make a restudy of those benefit districts in the light of what has happened since 1929.

PHILIP H. CORNICK.

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FEDERAL LIMITATIONS UPON MUNICIPAL ORDINANCE MAKING POWER. B. Harvey Walker. Columbus: Ohio University Press, 1929. VIII, 207 pp. $3.00.

The ordinance making power which differentiates the true municipal corporation from other local governmental agencies is primarily a matter of statute law, construed by the courts in the light of the limitations imposed by the state constitution. The principles governing such construction which have been worked out by our courts constitute a vast body of common law quite as uniform among the various states as any other part of their public law. But that construction is necessarily subject to the paramount law of the land as set forth in the Federal Constitution.

The comprehensive study of the federal limitations upon the legislative powers of the states for which we are indebted to Dr. Walker is a valuable contribution to our literature on constitutional law. The aim of the author was to bring before municipal officials the positive restraints upon the ordinance making power as they have been defined by the Supreme Court. The approach selected is admirable. The decisions are grouped as they relate to the various clauses of the Constitu-

tion, especially the commerce clause, the contract clause and the Fourteenth Amendment. The statements of the issues raised in the case and the holdings of the court are clear and accurate. In short the work has been well done and will be of valuable assistance to all state and municipal legislators.

Any adverse criticism of Dr. Walker's work must take the form of disappointment that he has not undertaken to treat of certain topics that are constantly requiring elucidation. We would welcome a supplementary volume, to include a study of the attitude of the Court as to due process in administrative procedure, the requirements of definite standards of conduct in ordinances, the limitations upon the exercise of the power of eminent domain, the all important question as to how far the Court will go in recognizing the decisions of the state courts as to what is a public purpose, or a public use or the extent of the police power itself.

C. W. Tooke.

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Taxation in Virginia. By William H. Stauffer. New York: The Century Company, 1931. 309 pp. $4.00.

This survey of the tax system in Virginia is primarily a factual study that presents exhaustive and detailed statistical computations on the significant phases of the state's revenue system. The author interprets and analyzes the data and makes such suggestions for improvements as in his opinion specific facts warrant and sound theory demands. The first half of the volume examines in successive chapters the growth of governmental costs and taxes, state and local tax sources, financial aspects of county government in Virginia, state and local property taxes, and the income tax. The last half of the volume analyzes the taxation problems of the state from the standpoint of the subjects of taxation, considering respectively the farmer, ordinary business, public service corporations, banks, and such miscellaneous subjects as insurance companies, inheritances, and forest lands. The emphasis in these chapters is mainly on such factors as equitable treatment, ability to pay, benefits received, comparisons with other states, and administrative difficulties.

The author pleads for the development of a popular sentiment that will correct the unequal and discriminatory assessments all too evident in the taxation of real estate and tangible personal property. He believes the retention of the tax on bonds and other forms of indebtedness and the exemption of shares of stock to be inconsistent. He thinks it desirable to abandon the annual franchise tax measured by authorized capital stock which is imposed upon domestic corporations, and suggests, in lieu thereof, an increase in the corporation income tax rates to 4 or 4½ per cent. A low rate on intangibles in conjunction with the personal income tax is also suggested. The income tax rates on personal income might properly be set to higher levels in the case of the larger incomes. "Restoration of exemptions to $1000 and $2000 and provision for rates ranging from one per cent to five per cent at intervals of $2000 would, on the whole, be much more equitable than the provisions of the existing law." Federal statutes and court decisions prevent the states from exacting from banking corporations taxes proportional to their ability to pay. Certain changes, however, might be made in the bank tax law which might result in more revenues from that source, but which would not raise the question of constitutional restrictions. While the author finds that railroads and other public utilities contribute a substantial amount to the state and local governments, he concludes that their burdens are not excessive when comparisons are effected with other states.

The volume evidences painstaking research on the part of the author. It is a highly creditable addition to our materials on state finance. The reviewer feels that the editing and arrangement of the subject matter leaves much to be desired. There are no summaries at the end of the chapters, and the four-page final chapter is very inadequate as a concluding chapter for such a comprehensive treatise. The failure to number pages containing tabulations, and these are numerous, is also an unfortunate inadvertence. While these are minor matters, the reviewer believes that more attention to the form of presentation in the case of scientific studies of this sort would add to their usefulness.

Martin L. Faust.

RURAL GOVERNMENT. Proceedings of the Fourteenth American Country Life Conference, New York, 1932. viii, 164 pp. $2.00.

These Proceedings contain selected papers read at the Conference of the American Country Life Association held last August at Ithaca, New York. They all relate to county and rural government and constitute a valuable index to current thought on the subject. In the first article former Governor Frank O. Lowden indicts in convincing language obsolete features of rural government, overlapping units with the long ballot, obsolete townships and slovenly financial practices are condemned in no unsparing terms. Other articles representing advance ideas include The New Rural Municipality by T. B. Manny, Can Local Self-Government be Preserved in our Rural Areas? by Paul W. Wager, and What Changes Should be Made in our Local Units of Government? by Howard P. Jones.

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GOVERNMENT BY COOPERATION. By Emerson D. Fite. New York: The Macmillan Company, 1932. 345 pp. $3.00.

This book deals in some detail with the notion of coöperation as a device in government and administration. This notion is a peculiarly significant one in a political society organized federally and in an economic system in which the belief in individualism is still deeply intrenched.

A brief chapter in which the formation of the Union is discussed as an example of interstate coöperation is followed by others dealing with the development of national coöperation —both legislative and administrative—with the states, with various types of joint action by states, departmental coöperation on various governmental levels, with international coöperation, and with coöperation in business enterprise here and abroad. To the reviewer the most interesting portion of the book is that dealing with national coöperation with the states and interstate coöperation through the executive, legislative and judicial departments. Much of the discussion has to do with such mundane matters as motor vehicle and standard weight and measure legislation and with interstate water rights and bridge compacts, but of such is modern administration, and it is worth a good deal to have collected in one place so much that is illustrative of the actual machinery evolved for doing the work of government.

While useful as it is, the book is suggestive as a starting-point for more detailed studies of these developing devices from the point of view of their effectiveness, the exact nature of the machinery and techniques, and such subtler matters as the repercussions on state government and administration.

LANE W. LANCASTER.

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MUNICIPAL REPORTS

ALBERT LEA, MINNESOTA. *Annual Report, 1931.* By C. C. Ludwig, City Manager. 24 pp.

CINCINNATI, OHIO. *Municipal Activities (Annual Report), 1931.* By C. A. Dykestra, City Manager. 52 pp.

TWO RIVERS, WISCONSIN. *Sixth Annual Report, 1931.* By E. J. Donnelly, City Manager. 72 pp.

These three reports are of an exceptionally high caliber. All were published from six to ten weeks after the close of the year and thereby bring a freshness which is so desirable in a public report. They vary somewhat in length without apparent justification. Albert Lea tells its population of 10,000 as much as it thinks it will read in twenty-four pages while Two Rivers with the same population imposes seventy-two pages on its inhabitants. Cincinnati on the other hand has tried to satisfy the "reporting" appetite of its 450,000 people with but fifty-two pages. In cutting the length of this year's report to less than half of the 1930 issue Cincinnati apparently is not laboring under the illusion that the length of a public report should vary with the size of the city but rather on the basis of public interest in reporting.

For a neat attractive pocket size booklet containing seemingly all the information of interest to its citizens the Albert Lea report ranks high. For example, the citizen worried by his tax dollar finds on page 24 that in 1924 the total tax levy was 93 mills and that in the good year 1932 it had shrunk to 81 mills and the levy for each of the eight years is broken down according to purpose. The citizen also learns that only one death from a communicable disease occurred in 1931, that the total fire loss for the year was $3,484.47, or 1.1 per cent of the value of property

threatened, and that the charter limit for general bonds is $727,734 while present bonds outstanding total $441,663, leaving a comfortable margin of $286,071. It would be difficult to think of a question regarding Alberta Lea's municipal affairs that is not answered in this attractive booklet.

We have been accustomed to seeing good reports emanating from Cincinnati but the present issue is a bit better than its predecessors. First of all we find all we want to know in fifty-two pages while back in 1929 we had to read 198 pages or at least were expected to, in order to have our appetite for reporting satisfied. In one notable respect Cincinnati's report is distinctive in that it devotes two pages to the Personnel Division, an activity almost invariably ignored in municipal reports. Here one can find the number of employees by activities for each year of the past seven years. Personally the reviewer would have been interested also in a table giving the accessions and separations from the service, and salary changes, arranged by departments. One cannot help but note, however, and with pride, that for the functions under the city manager there was a decrease of 169 in the number of employees for the six-year period. To mention but a few of the features of which this report abounds we learn that the city contributed $720,000 to unemployment relief and still closed its books at the end of the year with a balance of over $40,000 and that the tax rate of $9.10 per thousand of assessed valuation was the lowest rate of any city of 300,000 population or over.

The Two Rivers report is also of a very high order—length being its worst offense. The charts are plentiful and clearly drawn, the pictures too are well selected, and this illustrative material is well distributed throughout the report. It would appear to many to contain too much detail and many items of merely passing interest. It might very well be, however, that the people of Two Rivers take time to dig into the trivial affairs of their municipal government and if this be true more strength, or perhaps more appropriately, better eyesight to them. With such examples of public reporting as these three reports offer there is no longer any excuse for a public official not knowing what and how to report the activities the administration of which he has been charged.

Clarence E. Ridley.

The University of Chicago.

REPORTS OF PAMPHLETS RECEIVED

EDITED BY EDNA TRULL

Municipal Administration Service

Survey of Motor Equipment.—Bureau of Municipal Research, St. Louis, Missouri, 1932. 64 pp. The complete motorization of city forces and the rather high cost warrants careful study. The numerous agencies interested will find an important addition to the limited material available in the recently completed survey of the situation in St. Louis. A total of almost one thousand motor units are controlled by the city, the police department, the board of education, the library and the zoo, and in addition monthly allowances are made for the use of certain privately owned cars. The survey indicates opportunities for numerous improvements, with a probable saving of $50,000 a year in city and police fleet operation. This economy could be effected primarily through centralization of control to eliminate idle cars and chauffeurs, to equalize transportation facilities, to facilitate sound purchasing methods, to provide proper checking on the use of the cars as well as their mechanical condition, and to maintain uniform records as to unit costs and other operating data essential to efficient conduct of this important municipal property. (Apply to Bureau of Municipal Research, Fullerton Building, St. Louis, Missouri.)

*

Essentials of American Government.—F. A. Ogg and P. Orman Ray. Century Company, New York, 1932. 620 pp. The authors of this volume have presented the same general material and point of view as in their *Introduction to American Government* in somewhat briefer fashion. Important facts are given, but numerous details and suggested references have been omitted. Such material

has been included as was necessary to present adequately most recent developments, such as, for instance, a new chapter on foreign relations. (Apply to the Century Company, 353 Fourth Avenue, New York. Price $3.00.)

*

National Directory of Commodity Specifications.—Bureau of Standards, Washington, D. C., 1932. 548 pp. This is the revision of the directory first issued in 1925, containing a complete list of the standards and specifications of national trade associations, of technical societies and organizations and of federal governmental agencies. Such a compilation of current nationally recognized standards is invaluable to purchasers and specification-making groups. (Apply to Superintendent of Documents, Washington, D. C. Price $1.75.)

*

Survey of Zoning Laws and Ordinances Adopted during 1931.—Norman L. Knauss. Bureau of Standards, Washington, D. C., 1932. 46 pp. Sixty-nine per cent of the urban population of the United States lives in zoned communities. Several state enabling acts enacted during the past year, and other important legislation are briefly reviewed here. Statistics on zoned municipalities—as to the type of ordinance and the date of adoption are given by states, and the material is compiled into several interesting tables. (Apply to Division of Building and Housing, Bureau of Standards, Washington, D. C.)

*

The Management of Municipal Utilities in Wisconsin and **The Financing of Municipal Utilities in Wisconsin.**—League of Wisconsin Municipalities, Madison, 1932. 15 and 11 pp. The first of these two brief studies deals with several types of supervision of municipal utilities and recommends an ordinance providing for a special utility commission, to be appointed by the local council, which would be responsible for the general control of the municipality's utilities, through the appointment of manager, control over funds and the like, in accordance with the Wisconsin statutes. The second study summarizes the financial arrangements which may be made by municipalities interested in acquiring, constructing or reconstructing light, heat, water power, telephone or toll bridge utilities. (Apply to League of Wisconsin Municipalities, 114 N. Carroll Street, Madison. Price 25 cents, 50 cents.)

*

Social Insurance Legislation.—Metropolitan Life Insurance Company, New York, 1932. 70 pp. For the fourth in its series of monographs on the important subject of social insurance, the investigators for the Metropolitan Life Insurance Company have brought up to date their material. The present, as well as earlier, provisions of the health, unemployment and pension systems are presented for the countries of Great Britain, Germany, Belgium, Denmark, Italy and Switzerland. Pertinent statistical material is given. (Apply to Metropolitan Life Insurance Company, 1 Madison Avenue, New York.)

*

A Tabulation of City Planning Commissions in the United States and **Survey of City Planning and Related Laws in 1931.**—Lester G. Chase. Bureau of Standards, Washington, D. C., 1932. 45 pp., 54 pp. Earlier reports are here brought up to date. The official planning commissions of 828 municipalities are described as to size, term of office, method of appointment, and whether paid or voluntary. The survey describes recent state legislation on city planning. (Apply to Division of Building and Housing, Bureau of Standards, Washington, D. C.)

*

Regional Planning Commissions or Organizations.—Lester G. Chase. Bureau of Standards, Washington, D. C. 8 pp. There are seventy-nine existing regions which have undertaken some group organization for planning. Four of these are official state organizations, and forty-five are official county commissions. Many of the others are unofficial. These are all listed here by states. (Apply to Division of Building and Housing, Bureau of Standards, Washington, D. C.)

*

Handling Traffic Violations in New York State Cities.—Glen F. Leet, New York State Conference of Mayors and School of Citizenship and Public Affairs, Syracuse, N. Y. 1931. 70 pp. Mr. Leet shows the importance of so-called minor traffic regulations and describes the methods used in enforcement. These are evaluated on the basis of their

effectiveness, the burden to the public and the cost to the municipality. The practice in New York state has been supplemented by a description of the traffic violations bureaus in a number of other cities. Considerable attention is given to records and various reporting forms. (Apply to Bureau of Training and Research, New York State Conference of Mayors and Other Municipal Officials, City Hall, Albany.)

*

A Survey of the Organization and Operation of the Tax-Supported Hospitals in the County of Hamilton and City of Cincinnati.—Cincinnati Bureau of Governmental Research, Cincinnati, Ohio, 1932. 156 pp. Specific requests to study the tax-supported hospital institutions in Cincinnati revealed that such study should include joint consideration of the Cincinnati General Hospital, the Hamilton County Tuberculosis Sanitorium, the Hamilton County Chronic Hospital and the Hamilton County Home. These four units, though intelligently and cooperatively operated, nevertheless, suffer from separation into city and county units and the transfer of the General Hospital to the county is therefore recommended. The survey also leads to the opinion that the entire health work of the county and its political subdivision should ultimately be put under a director of public health responsible for the entire county. More immediately, the four institutions surveyed should be put under a director of hospitals and administered through his deputies. The results of the detailed study of the functions and operation of the units are given. (Apply to Cincinnati Bureau of Governmental Research, 914 Main Street, Cincinnati, Ohio.)

*

Welfare (Poor Relief) Activities of Wyandotte County, Kansas.—Bureau of Governmental Research, Kansas City, Kansas, 1932. 63 pp. The frequently voiced opinion that the cost of welfare should be placed upon the taxpayers was partially responsible for the study of welfare activities described in this report. At present this cost is met by the governments of Kansas City and of Wyandotte County, by sixteen community chest agencies, and by private hospitals through minor charitable work. The report sets forth the methods and limitations of the tax-supported relief activities, and points out possible improvements in their operation so that further public support may be most effectively handled by the governmental units. Emphasis is put not only on efficient administration but on the use of existing competent private organizations as agencies of the government. Sound suggestions to these ends are made. Valuable appendices give proposed accounting records for the poor farm and the draft of a law for the establishment of county welfare departments in all counties over 140,000 population. (Apply to Bureau of Governmental Research, 727 Minnesota Avenue, Kansas City, Kansas.)

*

Nuisances.—Ambrose Fuller. League of Minnesota Municipalities, 1932. 7 pp. The classification and control of nuisances is discussed in this brief reprint from *Minnesota Municipalities*. A proposed ordinance is included. (Apply to League of Minnesota Municipalities, University Library, Minneapolis. Price 10 cents.)

*

Charges and Fees for Community Recreation Facilities.—National Recreation Association, New York, 1932. 158 pp. The rapid extension of recreation facilities through public park and school systems has created the serious problem of the extent to which such opportunities should be self-supporting. There are some forty-three such activities for which some cities charge fees. The bulk of this volume is devoted to a listing of such fees and charges in over one hundred cities of the United States and Canada. The study is made additionally useful by the inclusion of other pertinent statistical material and brief discussion of such factors as the effect of charges on use and participation, the disposition of revenue, the relation of fees to municipal accident liability and a summary of the principles and practices in use. (Apply to National Recreation Association, 315 Fourth Avenue, New York.)

JUDICIAL DECISIONS

REVIEWED BY C. W. TOOKE *Professor of Law, New York University*

Municipal Powers—Extent of Power of Municipalities to Contribute to Private Associations Organized to Promote Public Welfare—The general principle that a power granted to municipal corporations without limitation as to the method of its exercise carries with it the implied power to adopt such measures of execution as may seem best to the local governing body, frequently is applied to justify the appropriation of funds to private agencies that are engaged in a public work which the municipality is authorized to undertake directly. Thus the power to establish and maintain hospitals or libraries may be deemed sufficiently broad to sustain an appropriation to charitable organizations engaged in the same kind of work, and a power to spend money for advertising may be exercised by making contributions to a local chamber of commerce for that purpose.[1] This principle is necessarily limited, however, to contributions to those objects which come within the purview of the powers which are committed to the municipality in question.

The Supreme Court of Georgia in *Atlanta Chamber of Commerce* v. *McRae,* 163 S. E. 701, had before it the question whether the board of commissioners of Fulton County could make contributions to the Atlanta Chamber of Commerce, the city freight bureau, the convention and tourist bureau and the better business commission, all voluntary associations organized to promote the interests of the locality, to which the board had generously appropriated over thirty thousand dollars of the county funds. Under the Georgia constitution, (Art. 7, §6, ¶2) the general assembly's power to authorize counties to tax is limited to certain specified purposes, which would preclude the appropriations in question, but the organizations to be benefited pointed out that county funds derived from sources other than taxation were not subject to this limitation. Another section of the constitution (Art. 7, §16, ¶1), however, forbids the general assembly from authorizing "any donation or gratuity in favor of any person, corporation or association." The court intimates that this limitation applies to the exercise of any powers that may be granted to the local subdivisions of the state. The taxpayer's petition for an injunction was therefore sustained by the court. The court points out that in applying this rule it does not overlook the principle that express authority to the county board to do a particular thing implies the authority to employ such means as may be necessary to accomplish the act.

A similar decision holds that the city of Atlanta has no power to contribute money to the Municipal Rate Association of Georgia (*Stuart* v. *Atlanta,* 163 S. E. 493). The court in this case based its decision upon the ground that no authority had been granted the city to make such an appropriation. Beck, P. J. and Atkinson, J. dissented upon the ground that in their opinion the city's interest in rate making was sufficient in connection with municipal contracts and with service to its inhabitants to warrant the implication of the power to hire experts and even to contribute to the investigations of a private instrumentality. The apparent inconsistency in the reasons advanced by the court in these two decisions may be reconciled if we recall that in *Atlanta Chamber of Commerce* v. *McRae,* the contributions were for purposes which under

[1]State ex rel. LaCrosse Public Library v. Bentley, 163 Wis. 632, 158 N. W. 306; Finan v. Cumberland, 154 Md. 563, 141 Atl. 269; Sacramento Chamber of Commerce v. Stephens, 290 Pac. 728.

the Georgia statutes were clearly beyond the scope of county functions, while in *Stuart* v. *Atlanta,* the proposed subsidy was to assist in an investigation which might possibly have a remote bearing upon the carrying out of other municipal powers. Under the principle announced by the court, cities may be expressly authorized by statute to engage directly in utility rate investigations or to contribute to associations engaged in such work. The power to contribute might be implied from an express power to make investigations which in turn might be implied from an express grant of power to regulate utility rates. The legal difficulty which confronted the court was that it did not appear that any of these powers had been expressly conferred upon the city, and that the existence of the implied power in issue was predicated upon the existence of some other vague power which at best was one that could be found only by implication.[2]

In view of the severe criticism of the decision in the *Stuart* case by Dr. Bauer in the June issue of the REVIEW, it may not be amiss to point out that the courts are bound to follow the statutes and that there is no legal or political principle of construction by which they may extend the legislative powers of municipalities by piling up implication upon implication. Such a construction of legislative powers would subvert the foundations of local government. The exclusive control of public utility rate making in Georgia as in most other states is vested in the public service commission and not in the municipalities. It must be remembered, also, that in states where the power to regulate utility rates is committed to a state commission, a city has no interest or standing to complain or to intervene as a party to litigation over rates except so far as its rights as a consumer are concerned.[3]

[2]The limitations upon the doctrine of implied powers of municipalities are well set forth in the dissenting opinion of Beck, P. J. and Gilbert, J. in City of Augusta v. Thomas, 159 Ga. 435, 126 S. E. 144. See, also, the recent decision of the Supreme Court of Ohio in Gorman v. Henck, 180 N. E. 67, which held that the County of Hamilton had no power to make a contract for expert advice with the Cincinnati Bureau of Municipal Research.

[3]City of New York v. New York Telephone Co. 261 U. S. 312; Morrell v. Brooklyn Gas Co., 231 N. Y. 405, 132 N. E. 130; Chicago v. Chicago Rapid Transit Co., 52 Sup. Ct. Rep. 2 [adv.], 76 L. ed. 34 [adv.].

The decisions of the Supreme Court of Georgia in these cases, therefore, seem to be consistent with sound legal and constitutional principles. The court simply refuses to usurp the functions of the legislature. It intimates that it will sustain an express legislative authority to donate money to a private organization to carry out a purpose which is within the scope of the delegated powers of the municipality. Whether such a power will be implied will depend upon the showing that it is reasonably essential to the exercise of some express power granted by the legislative branch of the government.

*

Statutory Regulation of Wages of Employees on Public Works—CALIFORNIA UPHOLDS GENERAL LAW—NEW YORK LIMITS APPLICATION TO SPECIFIC CLASSES OF LABORERS. —The Supreme Court of California in a recent decision, *Metropolitan Water District of California* v. *Whitsett, as Chairman of the Board of Directors of the Metropolitan Water District of Southern California,* 10 Pac. (2d) 751, has affirmed the constitutionality of the Public Wage Statute of that state (Stats. 1931, p. 910), which requires the insertion in contracts upon public works that the contractor will pay the prevailing scales of wages for different classes of work in the community where the improvement lies. This act is quite similar in its provisions for administrative determination of the wage scales to that of Illinois, which was recently adjudged to be invalid by the Supreme Court of that state.[1]

In the instant case the same questions were raised as in the Illinois case, but the court holds that the act does not make an invalid delegation of the legislative power and fully sustains the power of the legislature to control the making of contracts by subordinate state agencies. The opinion of the court answers the objection that the power granted to the board to fix the wages to be paid employees upon public contracts is unlawful by saying that such acts no more involve a delegation of the legislative power than the act of prescribing the salaries and wages of its own officers and employees. The opinion is to be commended as a clear and complete discussion of similar legislation in other states and of the adjudications of the courts thereon.

[1]Mayhew v. Nelson, 346 Ill. 381, 178 N. E. 921. See note in the March, 1932 issue of this REVIEW, vol. XXI, p. 189.

In another decision handed down the same day, *City of Pasadena* v. *Charleville, City Manager,* 10 Pac. (2d) 745, the court decided that the statute discussed above does not take precedence over the provisions of the charters of home rule cities. As in the previous case, the issue arose upon the refusal of the local officials to execute a contract without compliance with the statutory requirements. Both the prevailing wage statute and that forbidding the employment of aliens on public works were involved in this case and singularly enough the latter statutory requirement was held to be superior to any charter provisions of the home rule cities. The reasoning by which these inconsistent conclusions were reached recalls to mind some of the earlier opinions of the same court where the question of the determination of home rule powers were first being worked out. It may be noted that the attorneys of some fifteen other cities joined those of Pasadena and were permitted to file briefs as friends of the court. Under such a barrage of authority, the court seems to have taken once again a new position upon the ever recurring question of the conflict between general statutes and home rule charters.

In *McCaffrey* v. *State of New York,* 259 N. Y. 159, the Court of Appeals of New York holds that that statutory provision requiring that state departments to pay the rate of wages prevailing in the locality cannot be applied to one whose employment is unique. The claimant was a lock tender on the barge canal and sued to recover the difference between the wages that he had received and what he contended was the prevailing rate for similar work in the locality. There being no other men employed as lock tenders, he took the position that he was a common laborer and showed that the wages he had been given were lower than those paid to ordinary workmen in that vicinity. The statute applicable thereto (Laws of 1899, Ch. 567) provides that the wages to be paid for a legal day's work "shall not be less than the prevailing rate for a day's work in the same trade or occupation in the locality" where such work is done.

The decision of the court in narrowly limiting the statute set forth to work of the same specific kind indicates an extremely literal construction and a failure to appreciate that the legislative intent was to set up a practical standard which would cover all cases. A dissenting opinion by Judge Crane, concurred in by Chief Judge Pound, states that the construction adopted by the court will render the statute meaningless if the prevailing rate to be paid laborers on the canals is to be determined by the wages of other lock laborers when no such class can possibly exist.

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State Control over Municipal Finance— Oklahoma System Held Not to Apply to Expenditures for Purely Local Purposes.— Among the various devices adopted in different states to control local finance, the legislature of Oklahoma has provided by statutes passed in 1917 and 1921 that each board of county commissioners, the mayor and council of each city or the officers exercising like power in any city having a charter form of government, the board of trustees of each incorporated town, the directors of each township, the board of education of each independent school district and the directors of each school district shall be required to make itemized statements of estimated needs and probable income from sources other than *ad valorem* taxation for running expenses for the current fiscal year. It requires such estimates to be published in some newspaper, or to be posted so that the people of the various tax paying units may be informed thereof and that after publication they shall be certified to the excise board of the county. It further requires each officer, board or commission of any county, city, township, and school districts or town, and all employees charged with the management or control of any department or institution, to make and file with the board or commission, charged with the duty of reporting to the excise board, a report in writing showing, by classes, the earnings and cost of maintaining their respective offices or departments for the previous fiscal year, together with an itemized statement and estimate of the probable needs thereof for the current or ensuing fiscal year. Their estimates and statements must also be transmitted to the excise board. The statute then provides that the county excise board "shall have power and authority to revise and correct" the estimates of the various municipal corporations "by either striking items therefrom, increasing or decreasing items thereof, or adding items thereto."

In a series of cases, recently decided, of

which perhaps *City of Ardmore* v. *Excise Board of Carter County,* 8 Pac. (2d) 2, is of most interest, the question of the extent of the supervision thus established came before the Supreme Court of Oklahoma. The city of Ardmore, which under a general statute has the power to engage in the business of operating an airport and to acquire real estate within or without the city for this purpose, placed in its estimates an item of $5,000 for the lease of lands for an airport and the county excise board struck out this item. The court, in deciding that the board exceeded its powers and that a writ of mandamus to require the board to restore this item was proper, holds that so far as expenditures are concerned the power of the board is limited to the correction of mistakes and to keeping the municipality within the constitutional and statutory limitations upon taxation and indebtedness. As to expenditures for matters not strictly local, as for health, education and police, the court intimates that the power of the excise board is not thus limited, but that it may add items to take care of mandatory duties pertaining to such matters when imposed by statute.

Beyond this point it seems that the legislature is without power to prescribe any general administrative control over municipal expenditures. Under the Oklahoma decisions, which practically go to the extent of holding that any effective legislative supervision over municipal expenditures amounts to local taxation by the legislature and violates the constitutional immunities of home rule rights guaranteed to cities by the state constitution, it is difficult to see how municipal finances may be controlled in the interest of the state at large without the adoption of a constitutional amendment. That a strong sentiment already exists in favor of such a control is evident from the fact that three of the judges dissented from the judgment of the court in an opinion by Judge Lester, in which he says:

> The prodigal spending of the taxpayers' money for unnecessary governmental frills has brought distress and disaster to the tax paying public, and there should be a check against public officials who give no heed to the burdens that they pass upon the taxpayers by incurring unnecessary obligations.

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Sunday Baseball—BALTIMORE WINS EXCEPTION FROM GENERAL STATUTORY RESTRICTIONS.—The home rule power of the city of Baltimore to enact local police laws was affirmed by the Supreme Court of Maryland in its recent decision in the case of *Ness* v. *Ennis,* 160 Atl. 8. Under the general statute of the state restricting work and labor on Sunday, it was held in a well known case,[1] that the home rule charter of the city delegating to it the plenary police power in local matters was subject to the general law and that a municipal ordinance permitting the playing of ball games on Sunday where no admission fee was charged contravened the statute, since the games might be played by persons who earned their living in that way. This principle applied also to ordinances to be submitted to the people under the home rule amendment to the state constitution (Art. 11A) providing for the enactment of local laws, both charter amendments and local laws being expressly made subject to the general statutes in case of a conflict between them.

At the 1931 session of the legislature, the city of Baltimore was expressly excepted from the general law regulating Sunday observance by a statute which was to be effective only upon the enactment of an ordinance making local regulations to be approved by the electors at a general or special election. Thereupon the council proposed to submit to the electors at the primary election on May 3, 1932 an ordinance providing that specified amusements, games and sports for profit shall be permitted after 2 o'clock P.M. on Sundays and games for recreation only at any hour of the day and that retail sales within certain restrictions shall also be allowed.

In holding that the proceedings to restrain the Board of Elections from submitting the ordinance to the electors should be dismissed, the court says that the home rule charter of Baltimore is the measure of the powers of the city except so far as restricted by the constitution and general statutes, and that the action of the legislature in lifting the ban of the Sunday observance statute as to Baltimore left the city authorities free to exercise as to this matter the broad police power given by the charter and to enact such local laws as may seem to them best. The objection that making the statute effective only upon the adoption of the ordinance by the electors of the city was an unconstitutional delegation

[1] Levering v. Board of Park Commissioners, 134 Md. 48, 106 Atl. 176 (1919).

of the power of the legislature was met by the conclusion of the court that the act of the electors would be the adoption of a local as distinguished from a general law and hence not within the constitutional inhibition. To this extent the decision of the court in *Levering* v. *Board of Park Commissioners* is directly overruled.[1]

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Eminent Domain—Street Widening—Measure of Damages to Owners for Lands Expropriated—In *Talbot* v. *City of Norfolk*, 163 S. E. 100, the Supreme Court of Virginia reaffirms the rule that an abutting owner from whose land a strip is taken for street widening is entitled to its fair market value without any deduction for benefits that may accrue to his remaining lands from the improvement. This decision conforms to the generally accepted rule, which provides that such benefits, if any, may be offset against the consequential damages to that part of the plot which remains or may be made the basis of special assessments against the owner, but may not be applied to deprive him of the just compensation required under the provisions of the state constitutions. This seems to be the only just rule of compensation, but under the pressure of extensive street widening programs has recently been abrogated in New York and Michigan, which now apply the rule that the damages are to be measured by the difference in value of the entire plot before and after the appropriation,[2] a rule which often works a serious injustice to owners from whom the most valuable part of their land is taken.

That the difference in value of the entire plot before and after taking is a just rule where all portions of the plot are of uniform value, as in the case of farming lands, is without question. In *State* v. *Day*, 47 S. W. (2d) 147, the Supreme Court of Missouri properly applies the rule to such an appropriation. The effect of applying the rule under other conditions is set forth with convincing particularity by the Supreme Court of Minnesota in *In re Improvement of Third Avenue*, 177 Minn. 159, 225 N. W. 92. Unfortunately for the landowner who is subjected to loss by the application of the whole lot rule, he can claim no protection from the federal courts under the Fourteenth Amendment merely because the rule of damages adopted by the state court happens to work a special injustice in his case.[3]

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Municipal Ownership—Towns in Louisiana Held Without Power to Engage in General Public Utility Gas Business.—In *Peoples Gas Company* v. *Town of Ruston* 141 So. 36, the Supreme Court of Louisiana recently reversed an order of the trial court dismissing the petition of the plaintiff who sought to enjoin the issue of $180,000 of bonds voted by the town for the purpose of acquiring and developing natural gas properties, constructing a distributing system and selling gas to its inhabitants. The court holds that towns have no power to go into such a business without express legislative authority and that the power conferred upon municipal corporations to purchase, erect and operate a "gas light plant" and to issue bonds for purchasing or constructing "light and power plants, gas plants" is not sufficient to sustain the contention of the defendant. Another statute of the state (Act No. 70, §1, Ex. Sess. of 1921) expressly conferred upon parishes and municipalities the power to engage in a general public utility gas business, but the court held that because the defendant did not rely upon such statute in its argument, a discussion of the applicability of that section to the issues involved would be "purely academic."

This position of the court must be due to peculiar rules of procedure in that jurisdiction, for we are not aware of any other decision in which a court has refused to take judicial notice and apply general statutes conferring local powers because of a failure of a party to plead or expressly rely upon them. As a result of this decision we are informed that a bill has been introduced in the Louisiana legislature expressly conferring the powers sought to be exercised by the defendant upon the municipalities of the state, and that another bill will be introduced placing companies producing natural gas within the state under the control of the Public Service Com-

[1]The proposed ordinance was submitted to the voters on May 3, 1932 and was adopted by a vote of nearly four to one, having received a plurality of 83,322.

[2]Matter of City of New York [Fourth Avenue] 255 N. Y. 25, 173 N. E. 110, certiorari denied, 283 U. S. 860; In re Bagley Avenue, 248 Mich. 13, 226 N. W. 690.

[3]Crane v. Hahlo, 258 U. S. 147.

mission and making compulsory the sale of gas from pipe lines to municipalities within twenty miles.[1]

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Contracts—Letting to Lowest Responsible Bidder—Not Required in Absence of Statute.—The statutory requirement that municipal contracts shall be let to the lowest responsible bidder has become so general and the adjudications supporting a strict compliance therewith so common that it is not strange that the impression prevails in some quarters that even without a statutory mandate the local contracting authority must comply with the same requirement. In two recent decisions of the highest courts of Massachusetts and Utah, *Archambault* v. *Mayor of Lowell,* 180 N. E. 157, and *Schulte* v. *Salt Lake City,* 10 Pac. (2d) 625, the court sustained the acts of the respective local authorities in awarding contracts to other than the lowest bidder and refused to control the exercise of the discretion given to them, untrammelled by the ordinary statutory restriction.

In each case the court vindicates the general rule that the auxiliary power of local authorities to contract carries with it the discretion to act as may seem to them in the best interests of the public. With such decision the courts will not interfere in the absence of proof of bad faith, fraud, collusion, corruption or palpable abuse of their discretion. A review of the earlier cases on this point may be found in a note in 38 L. R. A. (N.S.) 659 to *Butler* v. *Printing Commissions,* 68 W. Va. 493, 70 S. E. 119.

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Home Rule—Doctrine of the Inherent Right to Local Self-Government.—The power of the state legislature to withdraw local governmental functions from a municipality and vest them in a state board came before the Supreme Court of Rhode Island in *City of Providence* v. *Mounton,* 160 Atl. 75. In this case the petitioner attacked a statute effective April 10, 1931 (Pub. Laws 1931, Ch. 1910) which created a board of public safety for the city of Providence and conferred upon it the powers formerly exercised by the municipal police, fire and public service engineer departments, with broad legislative executive and judicial powers. In affirming the plenary control of the legislature over local government, unless restricted by the state constitution, the court reviews exhaustively not only the well known decisions in that state,[1] but also those in other jurisdictions. The opinion is very valuable to students of political science, who may be interested in the legal aspects of the controversy over the question of inherent rights of local self-government, which was finally put to rest by the Supreme Court in *Trenton* v. *New Jersey,* 262 U. S. 182.

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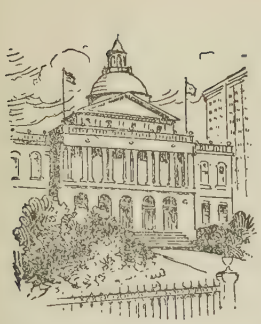
Public Utilities—Rights Upon Expiration of Franchise Under the Ohio Statutes.—The Supreme Court of Ohio in *Lake Shore Electric Railway Co.* v. *State,* 180 N.E. 540, had before it recently the question as to how far the power of the courts could be invoked by a city to get rid of the use of its streets by an interurban trolley company whose local franchise had expired several years previously. By a statute enacted since the city of Bellevue had granted the company a franchise in the streets, no interurban railroad can be required to abandon its tracks, unless first the municipality has made an application to the state public utilities commission and secured its consent.

The court, reversing a judgment below, holds that this statute is mandatory and that no action in quo warranto to oust an interurban railway from its franchises can be prosecuted, unless the statutory consent of the public service commission is first obtained. The paramount control of the state over the use of streets and highways and over transportation is a fundamental principle and all local powers and rights therein, even those of home rule cities, must yield to the general policy of the state as expressed in its statutes.

[1]Letter of Mr. Allen Barsdale of Ruston dated May 30, 1932.

[1]Newport v. Horton, 22 R. I. 196, 47 Atl. 312; Horton v. Newport, 27 R. I. 283, 61 Atl. 759.



GOVERNMENTAL RESEARCH ASSOCIATION NOTES

EDITED BY DARRELL H. SMITH — *Secretary-Treasurer, G. R. A.*

Recent Reports of Research Agencies.— The following reports have been received at the central library of the Association since May 1, 1932:

Bureau of Municipal Research of Philadelphia, for Thomas Skelton Harrison Foundation:
Medical Department of the Municipal Court of Philadelphia.

St. Louis Bureau of Municipal Research:
Survey of Motor Equipment.

Bureau of Public Administration, League of Virginia Municipalities:
Pension and Retirement Plan for Virginia Cities.

Municipal Reference Bureau, League of Virginia Municipalities:
Inspection of Gasoline, Motor Oil and Dispensing Equipment in Virginia Cities.
License Taxes on Barber Shops, Hairdressers, and Manicurists in Virginia Municipalities.
Proposed Police Schools in Virginia.

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The Thomas Skelton Harrison Foundation has recently published a report of the Bureau of Municipal Research of Philadelphia on the "Medical Department of the Municipal Court of Philadelphia." This is the eleventh report in the Foundation's Municipal Court Survey Series. Ralph P. Truitt, M.D., is the author.

The medical department serves all divisions of the municipal court. It offers general medical, pediatric, ophthalmologic, gynecologic, neuro-psychiatric, psychologic, dental, and bacteriological examinations. Nurses are available for follow-up work. A nursery for children of parents attending court is also under the care of the department.

The Bureau's report treats of the history and purposes of the medical department; its organization, personnel, and quarters; the method of reference and the number of cases referred by the various divisions; the volume of work and filing of records; and the quality of the service. A final chapter suggests a plan for reorganization of the department to perform a more useful service. Six complete case records and a synopsis of 200 case records are included in the appendices.

The author's major criticism of the department is its predominantly organic point of view, and its neglect of neuro-psychiatric work.

Copies of the report are available free of charge upon application to the Bureau of Municipal Research, 311 South Juniper Street, Philadelphia.

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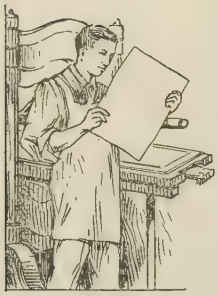
The Bureau for Government Research of West Virginia University, John F. Sly, director, has undertaken a systematic survey of state and local government in West Virginia. The project is being financed jointly by the University and by the West Virginia Taxpayers' Association, Edwin M. Keatley, secretary, with headquarters at Charleston. The program calls for a series of three reports covering the structure, service and finance of local, municipal, and state government within the state, the first of which deals with the county and its minor subdivisions. Two additional reports covering municipal and state government are parts of the major program to be completed within the next biennium.



NOTES AND EVENTS

Twenty-six Mayors Meet to Ask Federal Aid.—Viewing Uncle Sam as a willing Santa Claus, 26 mayors, out of 67 invited, met at Detroit with Mayor Frank Murphy June 1, and by resolution demanded that Congress immediately arrange a $5,000,000,000 loan for construction purposes, pass bills authorizing the Reconstruction Finance Corporation to extend its credit to cities, and authorize the corporation to buy re-funding bonds issued by cities. Headed by Mayors Murphy of Detroit and Curley of Boston, a committee of seven have presented the resolutions at Washington.

Jimmy Walker, mayor of New York, and "head-liner in the biggest troupe of municipal executives ever exhibited on one stage," according to the *Free Press,* fairly symbolized the theatrical-political aim and atmosphere of the gathering. Socialist Hoan of Milwaukee, backed by a long, consistent record, urged unanimous action when two dissenters, Marvin of Syracuse and Bright of Richmond, Va., spoke in opposition. "In most cases," said Marvin, "a balanced city budget requires executive courage more than federal financial aid. We must make sure the proposed relief is for the jobless, not for the politicians."

Detroiters were told that the conference was called by Mayor Murphy on request of the Hearst newspapers and the attendance lent color to that opinion. Of the 26 guest-mayors, 20 were Democrats, four were Republicans, one was a Socialist and one a Farmer-Laborite. Mayor Begole of Denver, the one representative of the far west, differed with Curley of Boston when the latter talked of possible revolution and the duty of the federal government. While the majority assumed, with the resolutions, the "unlimited credit" of the national government, Begole insisted that in the last analysis city government is a local problem, to be solved at home. "We should not further complicate our national financial crisis," said he, "by another demand on federal resources that do not exist."

In popular attention and press reports naturally Jimmy Walker "hogged the show." Besides his valet and barber, he was accompanied by Dudley Field Malone and three other New York officials. On being met at the station, Jimmy seemed a trifle disappointed by the meager size of the committee headed by Mayor Murphy. Other stars in the galaxy were Mayor Miller of Cleveland, the original General Jacob S. Coxey, now mayor of Massilon, Ohio, City Manager Welsh of Grand Rapids, Michigan, a potential candidate for governor who is at outs with the present administration, and the notorious "Bill" McKeighan of Flint, recently acquitted in the federal court on a charge of conspiring with boot-leggers.

W. P. Lovett.

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Atlantic City Reduces Taxes.— Atlantic City's tax rate for this year represents a reduction of 41.6 points or 12.5 per cent under 1931. In dollars the cut means $1,057,813 savings to the taxpayers. It follows a reduction of more than $900,000 in 1931, and signifies a total saving of $2,000,000 (more than 20 per cent) under the 1930 tax levy. Seven hundred and sixteen thousand dollars were saved by the city government. The city school tax was reduced $166,000. The rest of the saving came from $127,000 reduction in the state property tax and $47,000 reduction in the county tax.

To the Atlantic City Survey Commission, which began an active program for economy three years ago, much of the credit is due. Its first move was a study to determine where economies could be made and improvements in administration effected. The development of a modern budget procedure was seen as

the necessary first step in the economy program, and much of the credit is due to a sound budget system.

Howard G. Fishack, director of the Atlantic City Survey Commission, reports that the city has yet a good way to go before ideal conditions are attained. Nevertheless, the accomplishment to date should be encouraging to Atlantic City and inspiring to other municipalities seeking to reduce their expenditures without impairing essential services.

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Indianapolis News Wins Pulitzer Award for Tax Reduction Campaign.— The Pulitzer prize "for the most disinterested and meritorious public service rendered by an American newspaper" during 1931 was awarded to the Indianapolis *News* for its campaign for efficiency and economy in government. On August 1, 1930, says the announcement by Columbia University, the *News* launched a campaign to eliminate waste and reduce taxes in local government. This campaign continued for approximately eighteen months, and was successful to a marked degree. Exhaustive studies were made, and the news and editorial departments of the paper were mobilized in a convincing display of arguments for reduced public expenditures. The Indiana Taxpayers' Association coöperated by furnishing the statistical material upon which several phases of the campaign were based.

We congratulate the *News* upon this national recognition of a notable accomplishment in the field of local affairs.

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Results of Milwaukee Election.— The 1932 municipal election was the greatest Socialist victory since 1910. For the two years of 1910 and 1911 the Socialists numbered 20 out of 35 aldermen and their members held the four elective administrative offices—only to be dispossessed in 1912. Since 1916 the mayor has been the only Socialist elected to the executive offices and at no time in this interval has the Socialist party controlled a majority vote of the common council. This spring, however, they carried three of the four executive offices, and 12 aldermen out of 27. Although lacking two votes to muster a majority, with the aid of two "independents" they were able to elect their member president of the common council (replacing a non-partisan who had held that position for 20 years) and to organize the committees.

The mayor's message contained the suggestion that a municipal bank be organized. Plans for state legislation are now being made. It has not been announced whether the institution would be founded on the national or state banking plan. The newspapers credit Mayor Hoan with the suggestion that the bank be authorized to issue loans for the construction of small homes, and that interest on deposits be paid on the basis of profits earned rather than at a set figure.

Still another plan has been advanced by C. B. Whitnall, one of the leading Socialists in this city, to the effect that Congress be memorialized to accept Milwaukee's bonds as collateral for a like amount in currency on the same terms as it now accepts from national banks the federal bonds for which the United States treasurer issues the national bank notes.

PAULA LYNAGH.
Citizens' Bureau of Milwaukee.

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Milwaukee's Finances After the Mayoralty Election.— A *Milwaukee Journal* May 25 editorial reads "A few months ago Milwaukee got a lot of national publicity because it had a nice bank balance. Today taxpayers and city officials are discussing means to avert an empty treasury."

The city is within 21 per cent of lagging an entire tax levy in its collections. The total tax certificates outstanding on March 31 were $10,265,461. Taxes extended for six months carrying 5 per cent interest per annum, amounted to $7,509,369, and outstanding special assessment installments totaled $4,367,766. In other word, the city's accounts receivable amounts to $22,142,596, or 79 per cent of its $28,077,717 current tax levy for city and special assessment purposes. The city had a $6,622,218 bank balance on May 7, consisting entirely of the unused proceeds of bond issues intended for specific permanent improvements in progress. The general fund already owes $2,000,000 to bond funds.

The county, which assumes all the institutional and outdoor relief activities, has borrowed $5,000,000 this year, consisting of $2,500,000 of short-term notes (payable in 1933) and $2,500,000 of emergency relief bonds. On the other side of the ledger it is owed $4,998,331 by the cities, villages, and

towns (primarily in delinquent taxes) for county and metropolitan sewerage system purposes. Sixty-nine per cent of the total $10,111,228 tax levy for county, metropolitan sewerage system and state purposes have been paid as of March 22.

The board of estimate of the common council is meeting several times a week endeavoring to pare down the 1932 expenditures.

PAULA LYNAGH.

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The Milwaukee Mayor's Advisory Council.—At the request of Mayor D. W. Hoan, business, service and civic associations in Milwaukee elected delegates to form the Mayor's Advisory Council in March, 1930. At present the council consists of 42 persons representing the same number of organizations. Among them are 10 noon luncheon or service clubs, the Rotary Club being the only one not represented. Among the more important associations which send a delegate are the Milwaukee Real Estate Board, the City Club, the Engineers' Society of Milwaukee and Old Settlers' Club.

The purpose of the council, which works through committees, is to investigate municipal projects and questions involving municipal policies and to submit reports. The council is supposed to act as a sort of liason body between the public and the mayor. In effect the council has usually supported the mayor's position. In some cases complicated subjects which require expert technical advice have been hastily studied and reported upon.

A majority of the delegates, 24 altogether, represent small neighborhood groups of business men formed to promote the business interests of a small section of the city. The large size of the group, with the fact that usually the delegate has to report back to his local group for its opinion, makes the council somewhat unwieldy.

The charge has been made that the real purpose behind the group is political, but this is denied by its officers. Some of the members would not aid any such purpose. Difficulty has been found in maintaining attendance at general meetings.

J. E. HARRIS.

*

Milwaukee's New Condemnation and Benefit Assessment Law.—A comprehensive condemnation and benefit assessment law was passsed by the 1931 legislature subject to adoption at referendum by cities of the first class (Milwaukee is the only Wisconsin city in the class). The law was accepted by a two to one vote at the Milwaukee 1932 spring election.

The act provides a procedure whereby the city may acquire any property by gift, purchase, or condemnation for any municipal purpose, including excess condemnation, determine the damages, and assess the benefits. A full-time board of assessors is created to be appointed for three-year terms (rotation provided) by the mayor, subject to confirmation of the common council. Clerical assistance and technical advisers and experts are provided. The board of assessors may also call upon other city officials for assistance.

Milwaukee has a tax assessor in charge of real and personal property assessments, and a special assessment division in the department of public works for the sewer, paving, water mains, etc., assessments. The board of assessors will have jurisdiction over special assessments for projects involving the acquisition of additional land.

The jury established in the law is required by the state constitution. Before the common council can approve a project (three-fourths vote required), the board of assessors must submit a tentative plan of the proposed improvement, an estimate of the cost, maps of the property to be taken, maps of the benefit district showing samples of the maximum and minimum benefit assessment per front foot. The law contemplates that special assessments will be levied prior to the completion of the physical improvement. One-tenth of its 33 pages are devoted to listing the property owned by public and charitable organizations exempt from special assessment levies.

"General" special improvement bonds, and "particular" special improvement bonds may be issued. The former are payable from the special assessment installments collected from one or more projects, while the latter are issued against the specific property for the amount of the assessments and in case of a default may be foreclosed against that specific property. In addition, the city may issue general obligation bonds to pay for the property involved in the opening and widening of streets, and parkways, in the first instance, and then issue the special improve-

ment bonds to itself and apply the installment payments as collected to the payment of interest and principal of the general obligation bonds.

The law contains a retroactive provision under which it is hoped to recoup part of the costs of a down town street widening, civic center, and park extension project started in 1920 and now in the half and half stage.

PAULA LYNAGH.

*

Louisville's New Form of Government.—The short ballot and concentration of responsibilities are the key notes in the new form of government which has been in operation in Louisville since January, 1930. The ballot was shortened to the constitutional limits, the people now electing only the mayor, the twelve aldermen, the comptroller and inspector, the police judge and the board of education.

Power and responsibility have been placed squarely upon the shoulders of the mayor, who has wide appointive and directory powers. Most administrative divisions are grouped under six departments, law, public works, public safety, public finance, public health, and public welfare. The directors of these departments are appointed by the mayor and hold office at his pleasure.

Administrative boards and commissions outside of these six departments, appointed by the mayor with practically no restriction, include the civil service board, board of water works, library board, board of trustees of the University of Louisville, bridge commission, board of park commissioners, city planning and zoning commission and the inspector of gas and electricity. The Louisville and Jefferson County air board and the Louisville and Jefferson County children's home board are appointed by the mayor and county judge. With the exception of the board of trustees of the University of Louisville the members of these boards and commissions hold office for four years, their tenure being coterminous with that of the mayor. The mayor is ex officio member of six of these boards.

The members of the board of aldermen are elected for a two-year term. Each of the twelve wards is represented by one member, although election is by the city at large. The board of aldermen elect one city official, the assessor, and two boards, the board of sinking fund commissioners, and the board of equalization.

The comptroller and inspector is elected by the people for a four-year term, but in the alternate election to that of the mayor. The comptroller and inspector appoints the city accountant and members of the accounting staff. The police judge, elected for a four-year term, appoints the clerk of the police court and other officials of the court with the exception of the prosecuting attorney and the bailiff.

The power of the mayor extends to the legislative branch. A veto of ordinances or of individual items in appropriation bills can be overridden only by a two-thirds vote of the council. The directors of the departments, appointed by the mayor, have seats in the council meetings, and may take part in the proceedings, but have no power to vote.

There is little check upon the mayor's administrative powers. The council can exert no great power. Removal is extremely difficult. Under the party system of government the comptroller and inspector will be either of the same political faith as the mayor and provide little control or of the opposite political faith and possibly use his office so as to hinder and embarrass the mayor in his administrative leadership. The first election of comptroller and inspector will be in November, the present incumbent having been appointed by the mayor to serve for two years.

The present system has been satisfactory during the brief period of its existence. There is no agitation toward a change. Louisville is fortunate in having a mayor who is capable of carrying the responsibility of the office, and who apparently has the confidence and support of a majority of citizens. The question and fear often expressed is what might happen under less capable and less honest leadership.

Under the present form of government the mayor must be an active politician and he should also be a capable administrator and manager. Seldom are these qualities present in the same person. The direct election of a city manager has never been considered advisable. However, with the shortening of the ballot and the centralization of responsibility it was the hope of the charter framers that the people would carefully consider their vote for mayor.

KENNETH P. VINCEL.

University of Louisville.

Executive Control of Independent Officials in Washington.—The governor of Washington has a weapon with which he may threaten and coerce the elected and otherwise independent executive officials. Through the director of efficiency, whom he can remove at will, he can order such investigations of practices and financial transactions of any state office as he thinks advisable.[1] This power, usual enough in the several states, is given a new significance in Washington by the peculiar conditions surrounding it. The statutes provide that the cost of the investigation must be defrayed by the office investigated from its appropriations for services. Under cover of the always plausible excuse of investigating irregularities, the governor is thus able to decrease the funds of a legally independent official in a manner that will not appear in the budget or the biennial financial statements as they are now published.

Under such an arrangement, an official may be given the choice of acting in accordance with the desires of the governor or facing the possibility of an investigation. Even though no irregularities might be uncovered, the mere fact that an investigation was being made would be sufficient cause for popular suspicion of the conduct of the official, and what is equally important, the official's staff would be reduced or restricted by the depletion of his salary appropriations. Forced to make such a choice, the official might well be expected to submit to the governor's desires unless excellent reasons led him to do otherwise.

A few examples of the uses to which Governor Hartley has put this investigatory power in his seven years' conflict with certain elected officials will suffice to indicate its possibilities as a coercive instrument. The office of one elected official, who employs ten persons and handles but little money, was recently investigated for over a month, at a cost to him of almost $300. Shortly afterward the official was notified by the department of efficiency, acting in the capacity of budgetary control office, that he would have to reduce his rate of expenditure or overdraw his appropriation for salaries by about $300—almost the exact amount of the cost of the investigation. The office of another elected official has been the subject of several investigations in the past seven years. One of the more recent took eleven months, continuously employing three or more men at a cost of about $750 a month. The enormous bill incurred was evaded by the official, who refused to pay it because he had no appropriation for doing so. In this particular instance he seems to have been more fortunate than usual. A third, semi-independent office was recently investigated at a cost of $50, which amount was deducted from the salaries of its three already underpaid employees.

Repeated applications for budget appropriations with which to defray the costs of expected investigations have been made by the two elected officials referred to, but have always been denied by the governor, who apparently prefers that the cost of his investigations be felt by the offices investigated.

According to the figures of the department of efficiency, some 270 audits and investigations, "some of them regular, periodic audits," have been made by its men since 1921, when the department was created. While it would be unfair to claim that all, or even many of the investigations were made for political purposes, as seem to have been those mentioned, there is reason to believe that a considerable number were.

A complete description of this power must include an evaluation of its effectiveness, its merits, and its weak points. Such a judgment is very hard to make, however, because of the strong feelings about it on the part of those affected. While the reactions of the officials against whom it has been used indicate the telling effect it has, they cannot give us a basis on which to say that it is really effective in forcing action, because an official may resist even the heaviest pressure the governor can bring to bear upon him. It is very evident that this form of financial attack creates a deep resentment that is not conducive to the coöperation so necessary to efficient administration, but if used as a last resort in cases in which all possibility of coöperation has already disappeared, this ceases to be a valid objection to its use. As an emergency weapon in the hands of the governor, it is of definite value, but it is hardly to be recommended as an

[1]The director is the governor's staff agent and has, in addition to powers concerning budgetary control, personnel classification, etc., the power to examine into the financial affairs of every state office, both as auditor and as investigator, and to make efficiency surveys. This authority is reinforced by the power to issue *subpoenae duces tecum*, and to take oaths.

everyday instrument with which to extend the governor's control.

GEORGE S. ROCHE.

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Change of Name.— At its annual convention in Washington last month, the International Association of Comptrollers and Accounting Officers changed its name to the Municipal Finance Officers' Association of the United States and Canada. The Association will continue the *Comptroller* as a quarterly magazine and will publish a semi-monthly news letter for its membership.

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Lexington's Experience with a City Manager.—The city manager form of government is new in Kentucky. Under the law, only second class cities (of which there are five) are allowed this type of government. Lexington, Covington and Newport began their city manager regime on January 4, 1932. Ashland voted for the city manager form, but it will not go into effect until 1934. Paducah continues with the old form of commission government.

The commission form of government, under which Lexington had been living for twenty years, was reasonably satisfactory. But when the question was put to a vote in 1930 whether Lexington should have the city manager plan, the decision was overwhelmingly in favor of it.

When the time came to elect a new commission in the fall of 1931, the old commissioners came back into the picture. They had not openly fought the manager plan. Some of them had even signed the petitions favoring it. Four of the five members of the old commission announced themselves as candidates. The outgoing mayor, who had been in the services of the city for some thirty years, did not announce. It was a matter of common gossip that if the old commissioners were elected to office, the outgoing mayor would be chosen manager, though this was never publicly announced and did not go further than the gossip stage.

The Charter League, which had waged the battle to make a city manager possible, picked a slate of business men. At first it was thought the Charter slate would win in a walk, but it turned out to be a much harder fight than they had expected. They won, however, in spite of their mistakes.

From a list of more than a hundred applications of all sorts and sizes, Paul Morton was finally selected to be manager. Morton was then manager of Petersburg, Virginia, but is a native of Kentucky.

The latter part of December Morton came to Lexington and spent several days going over the layout. Before he left the city, he notified several of the old employees that due to the reorganization of the city government under the manager form, their services would be no longer needed. This, of course, did not apply to firemen or policemen, or any employees under civil service. In fact, the number of employees who were dismissed was not in excess of 10 per cent of the total. With these preliminaries, the decks were cleared for the opening of the new regime on January 4, 1932.

One of the first orders issued by the new manager was that the working day should be eight hours for all employees of city hall. Under the old regime, city offices were opened at nine and closed at four. Morton's order was that the offices should open at eight and close at five. By this order he increased the working hours of city employees 33 per cent. The public seemed to catch the point and accepted the move with approval.

Wage scales were readjusted, some of them downward, though there was no general slashing of wages of the city employees. For the most part the daily or monthly wage remained the same as under the old regime.

The next significant thing that came to public notice was the official publication of the minutes of the board meetings. Instead of depending upon the usual method of allowing a newspaper to carry the story of what went on in the meetings, the city manager caused the minutes to be published in one of the daily papers. This was something different. The people had a chance to know what their government was doing officially. Under the old regime, reporters from the press came to the board meetings and usually went back to their papers with a story. Under this new regime the news reporter can still get his story. He can still look for his sensation, if any, but at the same time the public is assured of the facts whether they are in the newspaper story or not.

After a month or so the news appeared in the papers that police schools were being held which all policemen were compelled to attend.

A thorough audit of the city's affairs by Ernst and Ernst was ordered, and the result published. This audit showed, among other things, that there was considerable carelessness and laxity in keeping the city's accounts. As a result a new auditing system is being installed whereby every item paid out by the treasurer is accompanied by a voucher stating for what purpose the payment is made.

The collection of back taxes was placed in the hands of a salaried official, and the old percentage system of collection done away with.

Then came the budget. The budget was prepared and submitted to the commission on February 23 by Manager Morton. It was a sixty-page document published in booklet form. A sufficient number of them were published so that any citizen who desired could obtain a copy. The budget carried a tax rate reduction of 12 cents. The old rate was $2.62; the new rate $2.50. The actual saving in dollars and cents was $70,000, with no apparent crippling of the city's ordinary services. On the contrary, the city manager incorporated in the budget an additional $12,000 for the equipment of a police radio broadcasting system and police cars equipped with radio receiving sets.

The manager reports that in the limited time he had been in office it has not been possible to make an exhaustive study of the system and operation of the several departments with a view of further reducing the cost and increasing the efficiency of the city government, but that the budget system is such that when additional economies develop, savings can immediately be placed in effect, and that expenditures estimated will not be made if it develops that they can be avoided.

All of these things have happened in the first two months of city manager government in Lexington. It is not yet known what the public thinks of the present project. The newspapers have been warm in their approval of the budget and of the tax reduction. Indeed, up to this time they have been warm in their general approval of the conduct of the city government under the new management.

J. Catron Jones.

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Two Rivers Retains Manager Form.— The people of Two Rivers, Wisconsin, decided on April 5 that their eight years' experience with the city manager plan had been satisfactory and refused by vote of more than two to one to abandon it. No organized campaign for the retention of the manager form developed until about two weeks before the referendum election. At this time a municipal voters' league was formed for the purpose of explaining the issues to the people. A week later a good government committee was created to sponsor actively the city manager plan, and about the same time the manager's annual report appeared, summarizing municipal improvements made since the introduction of the manager form. There was very little mud-slinging and the city manager was not publicly drawn into it at any time. Two Rivers now looks forward to a long period of rest from agitation against the existing system of government.

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The Political Science Association of Pennsylvania held its Second Annual Conference at Harrisburg on May 6 and 7. Discussion was directed to the problems of financial administration in a day of economic distress. For the most part the speakers were fiscal and budget officers of the state government. Professor W. Brooke Graves of Temple University was secretary of the Conference.